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THE GERMAN WAR BOOK

FIRST EDITION . . . . . *January, 1915*
Reprinted . . . . . *January, 1915*
Reprinted . . . . . *January, 1915*

THE GERMAN WAR BOOK

BEING "THE USAGES OF WAR ON LAND" ISSUED BY THE GREAT GENERAL STAFF OF THE GERMAN ARMY

TRANSLATED WITH A CRITICAL INTRODUCTION

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"Certain severities are indispensable in war, nay, more, the only true humanity very often lies in a ruthless application of them."
—THE GERMAN WAR-BOOK (p. 55)

TORONTO:
McCLELLAND, GOODCHILD & STEWART, LIMITED.
1915

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P73
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TO

THE LORD FITZMAURICE

IN TOKEN OF

FOURTEEN YEARS OF FRIENDSHIP

AND OF

MUCH WISE COUNSEL IN THE STUDY

OF FOREIGN AFFAIRS

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PREFATORY NOTE

THE text of this book is a literal and integral translation of the *Kriegsbrauch im Landkriege* issued and reissued by the German General Staff for the instruction of German officers. It is the most authoritative work of its kind in Germany and takes precedence over all other publications whether military or legal, alike over the works of Bernhardi the soldier and of Holtzendorff the jurist. As will be shown in detail in the critical introduction, the Hague Conventions are treated by the authors as little more than "scraps of paper"—the only "laws" recognized by the German Staff are the military usages laid down in the pages of the Manual, and resting upon "a calculating egotism" and injudicious "form of reprisals."

I have treated the original text with religious respect, seeking neither to extenuate nor to set down aught in malice. That text is by no means elegant, but, having regard to the profound significance of the views therein expressed or suggested, I have thought it my duty as a translator to sacrifice grace to fidelity. Text, footnotes, and capital headlines are all literally translated in their entirety. When I have added footnotes of my own they are enclosed in square brackets. The marginal

notes have been added in order to supply the reader with a continuous clue. In the Critical Introduction which precedes the text I have attempted to show the intellectual pedigree of the book as the true child of the Prussian military tradition, and to exhibit its degrees of affinity with German morals and with German policy—with "Politik" and "Kultur." I have therefore attempted a short study of German diplomacy, politics, and academic teaching since 1870, with some side glances at the writings of German soldiers and jurists. All these, it must be remembered, are integrally related; they all envisage the same problem. That problem is War. In the German imagination the Temple of Janus is never closed. Peace is but a suspension of the state of war instead of war being a rude interruption of a state of peace. The temperament of the German is saturated with this belligerent emotion and every one who is not with him is against him. An unbroken chain links together Clausewitz, Bismarck, Treitschke, von der Goltz, Bernhardi, and the official exponents of German policy to-day. The teaching of Clausewitz that war is a continuation of policy has sunk deeply into the German mind, with the result that their conception of foreign policy is to provoke a constant apprehension of war.

The first part of the Introduction appears in print for the first time. In the second and third parts I have incorporated a short essay on Treitschke which has appeared in the pages of the *Nineteenth Century* (in October last), a criticism of German diplomacy and politics which was originally contributed to the *Spectator* in 1906 and a study of the German professors which

was published, under the title of "The Academic Garrison," in the *Times* Supplement of Sept. 1st, 1914. I desire to thank the respective Editors for their kindness in allowing me to reproduce here what I had already written there.

J.H.M.

January, 1915.

THE GERMAN WAR BOOK

INTRODUCTION

CHAPTER I

THE GERMAN VIEW OF WAR

THE ideal Prince, so Machiavelli has told us, need not, and indeed should not, possess virtuous qualities, but he should always contrive to appear to possess them.[1] The sombre Florentine has been studied in Germany as he has been studied nowhere else and a double portion of his spirit has descended on the authors of this book. Herein the perfect officer, like the perfect Prince, is taught that it is more important to be thought humane than to practise humanity; the former may probably be useful but the latter is certainly inconvenient.

Hence the peculiar logic of this book which consists for the most part in ostentatiously laying down unimpeachable rules and then quietly destroying them by debilitating exceptions. The civil population of an invaded country—the young officer is reminded on one page—is to be left undisturbed in mind, body, and estate, their honour is to be inviolate, their lives protected, and their property secure. To compel them to assist the enemy is brutal, to make them betray their own country is inhuman. Such is the general proposition. Yet a little while and the Manual descends to particulars. Can the officer compel the peaceful inhabitants to give information about the strength and disposition of

[1] *Il Principe*, Cap. 18.

his country's forces?[1] Yes, answers the German War-Book, it is doubtless regrettable but it is often necessary. Should they be exposed to the fire of their own troops?[2] Yes; it may be indefensible, but its "main justification" is that it is "successful." Should the tribute of supplies levied upon them be proportioned to their ability to pay it?[3] No; "this is all very well in theory but it would rarely be observed in practice." Should the forced labour of the inhabitants be limited to works which are not designed to injure their own country?[4] No; this is an absurd distinction and impossible. Should prisoners of war be put to death? It is always "ugly" but it is sometimes expedient. May one hire an assassin, or corrupt a citizen, or incite an incendiary? Certainly; it may not be reputable (*anständig*), and honour may fight shy of it, but the law of war is less "touchy" (*empfindlich*). Should the women and children—the old and the feeble—be allowed to depart before a bombardment begins? On the contrary; their presence is greatly to be desired (*ein Vortheil*)—it makes the bombardment all the more effective. Should the civil population of a small and defenceless country be entitled to claim the right, provided they carry their arms openly and use them honourably, to defend their native land from the invader?"[5] No; they act at

[1] No! the Hague Regulations, Art. 44: "Any compulsion by a belligerent on the population of occupied territory to give information as to the army of the other belligerent, or as to his means of defence, is prohibited."

[2] No! the English *Manual of Military Law*, ch. xiv, sec. 463.

[3] Yes! the Hague Regulations, Art. 52: "They must be in proportion to the resources of the country"; and to the same effect the English *Manual of Military Law*, sec. 416, and the British Requisitioning Instructions.

[4] Yes! the Hague Regulations, Arts. 23 and 52; also *Actes et Documents* (of the Conference), III, p. 120.

[5] Yes! the Hague Regulations, Art. 2: "The population of a territory which has not been occupied who on the approach of the enemy spontaneously take up arms to resist the invading troops, without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents."

their peril and must, however sudden and wanton the invasion, elaborate an organization or they will receive no quarter.[1]

We might multiply examples. But these are sufficient. It will be obvious that the German staff are nothing if not casuists. In their brutality they are the true descendants of Clausewitz, the father of Prussian military tradition.

"Laws of war are self-imposed restrictions, almost imperceptible and hardly worth mentioning, termed 'usages of war.' Now philanthropists may easily imagine that there is a skilful method of disarming and overcoming an enemy without causing great bloodshed, and that this is the proper tendency of the art of war. However plausible this may appear, still it is an error which must be extirpated, for in such dangerous things as war the errors which proceed from the spirit of benevolence are the worst. . . . To introduce into the philosophy of war itself a principle of moderation would be an absurdity. . . . War is an act of violence which in its application knows no bounds."[2]

The only difference between Clausewitz and his lineal successors is not that they are less brutal but that they are more disingenuous. When he comes to discuss that form of living on the country which is dignified by the name of requisitions, he roundly says they should be enforced

"by the fear of responsibility, punishment, and ill treatment which in such cases presses like a general weight on the whole population. . . . This resource has no limits except those of the exhaustion, impoverishment, and devastation of the whole country."[3]

[1] The whole of these propositions, revolting as they may appear, are taken almost literally from the text of the War-Book, to which I refer the reader for their context.

[2] Clausewitz: *Vom Kriege* I, Kap. 1 (2).

[3] *Ibid.* V, Kap. 14 (3). Clausewitz's definition of requisitions is "seizing everything which is to be found in the country, without regard to *meum* and *tuum*." The German War-Book after much prolegomenous sentiment arrives at the same conclusion eventually.

Our War-Book is more discreet but not more merciful. Private property, it begins by saying, should always be respected. To take a man's property when he is present is robbery; when he is absent it is "downright burglary." But if the "necessity of war" makes it advisable, "every sequestration, every appropriation, temporary or permanent, every use, every injury and all destruction are permissible."

It is, indeed, unfortunate that the War-Book when it inculcates frightfulness" is never obscure, and that when it advises forbearance it is always ambiguous. The reader must bear in mind that the authors, in common with their kind in Germany, always enforce a distinction between *Kriegsmanier* and *Kriegsraison*,[1] between theory and practice, between the rule and the exception. That in extreme cases such distinctions may be necessary is true; the melancholy thing is that German writers make a system and indeed a virtue of them. In this respect the jurists are not appreciably superior to their soldiers. Brutality is bad, but a pedantic brutality is worse in proportion as it is more reflective. Holtzendorff's *Handbuch des Völkerrechts*, than which there is no more authoritative book in the legal literature of Germany, after pages of sanctification of "the natural right" to defend one's fatherland against invasion by a *levée en masse*, terminates the argument for a generous recognition of the combatant status of the enemy with the melancholy qualification, "unless *the Terrorism so often necessary in war* does not demand the contrary."[2]

To "terrorize" the civil population of the enemy is,

[1] *Kriegsraison* I have translated as "the argument of war." "Necessity of war" is too free a rendering, and when necessity is urged "*nötig*" or "*Notwendigkeit*" is the term used in the original. *Kriegsmanier* is literally the "fashion of war" and means the customary rules of which *Kriegsraison* makes havoc by exceptions.

[2] Holtzendorff, IV, 378.

indeed, a first principle with German writers on the Art of War. Let the reader ponder carefully on the sinister sentence in the third paragraph of the War-Book and the illuminating footnote from Moltke with which it is supported. The doctrine—which is at the foundation of all such progress as has been made by international law in regularizing and humanizing the conduct of war—that the sole object of it should be to disable the armed forces of the enemy, finds no countenance here. No, say the German staff, we must seek just as much (*in gleicher Weise*) to smash (*zerstören*) the total "intellectual" (geistig) and material resources of the enemy. It is no exaggeration to interpret this as a counsel not merely to destroy the body of a nation, but to ruin its soul. The "Geist" of a people means in German its very spirit and finer essence. It means a good deal more than intellect and but a little less than religion. The "Geist" of a nation is "the partnership in all science, the partnership in all art, the partnership in every virtue, and in all perfection," which Burke defined as the true conception of the State. Hence it may be no accident but policy which has caused the Germans in Belgium to stable their horses in churches, to destroy municipal palaces, to defile the hearth, and bombard cathedrals. All this is scientifically calculated "to smash the total spiritual resources" of a people, to humiliate them, to stupefy them, in a word to break their "spirit."

Let the reader also study carefully a dark sentence in that section of the War-Book which deals with "Cunning and Deceit." There the German officer is instructed that "there is nothing in international law against" (steht völkerrechtlich nichts entgegen) the exploitation of the crimes of third persons, "such as assassination, incendiarism, robbery and the like," to the disadvantage of the enemy. "There is nothing in

international law against it!" No, indeed. There are many things upon which international law is silent for the simple reason that it refuses to contemplate their possibility. It assumes that it is dealing not with brutes but with men. International law is the etiquette of international society, and society, as it has been gravely said, is conducted on the assumption that murder will not be committed. We do not carry revolvers in our pockets when we enter our clubs, or finger them when we shake hands with a stranger. Nor, to adopt a very homely illustration, does any hostess think it necessary to put up a notice in her drawing-room that guests are not allowed to spit upon the floor. But what should we think of a man who committed this disgusting offence, and then pleaded that there was nothing to show that the hostess had forbidden it? Human society, like political society, advances in proportion as it rests on voluntary morality rather than positive law. In primitive society everything is "taboo," because the only thing that will restrain the undisciplined passions of men is fear. Can it be that this is why the traveller in Germany finds everything "verboten," and that things which in our own country are left to the good sense and good breeding of the citizen have to be officiously forbidden? Can it be that this people which is always making an ostentatious parade of its "culture" is still red in tooth and claw? When a man boasts his breeding we instinctively suspect it; indeed the boast is itself ill-bred. If the reader thinks these reflections uncharitable, let him ponder on the treatment of Belgium.

It will be seen therefore that the writers of the War-Book have taken to heart the cynical maxim of Machiavelli that "a Prince should understand how to use well both the man and the beast." We shall have occasion to observe later in this introduction that the same

maxim runs like Ariadne's thread through the labyrinth of German diplomacy. Machiavelli's dark counsel finds a responsive echo in Bismarck's cynical declaration that a diplomatic pretext can always be found for a war when you want one. When these things are borne in mind the reader will be able to understand how it is that the nation which has used the strongest language[1] about the eternal inviolability of the neutrality of Belgium should be the first to violate it.

The reader may ask, What of the Hague Conventions? They are international agreements, to which Germany was a party, representing the fruition of years of patient endeavour to ameliorate the horrors of war. If they have any defect it is not that they go too far but that they do not go far enough. But of them and the humanitarian movement of which they are the expression, the German Staff has but a very poor opinion. They are for it the crest of a wave of "Sentimentalism and flabby emotion." (*Sentimentalität und weicheler Gefühlsschwärmerei.*) Such movements, our authors declare, are "in fundamental contradiction with the nature and object of war itself." They are rarely mentioned in this book and never respectfully. The reader will look in vain for such an incorporation of the Hague Regulations in this official text-book as has been made by the English War Office in our own *Manual of Military Law*. Nor is the reason far to seek. The German Government has never viewed with favour attempts to codify the laws and usages of war. Amiable sentiments, prolegomenous resolutions, protestations of "culture" and "humanity," she has welcomed with evangelical fervour. But the moment attempts are made to subject these volatile sentiments to pressure and liquefy them in the form of an agreement, she has protested that to

[1] In Holtzendorff's *Handbuch des Völkerrechts, passim.* For references, see below.

particularize would be to "enfeeble humane and civilizing thoughts."[1] Nothing is more illuminating as to the respective attitudes of Germany and England to such international agreements than the discussions which took place at the Hague Conference of 1907 on the desirability of imposing in express terms restrictions upon the la ng of submarine mines in order to protect innocent shipping in neutral waters. The representatives of the two Powers agreed in admitting that it did not follow that because the Convention had not prohibited a certain act it thereby sanctioned it. But whereas the English representatives regarded this as a reason why the Convention could never be too explicit,[2] the spokesman of Germany urged it as a reason why it could never be too ambiguous. In the view of the latter, not international law but "conscience, good sense, and the sentiment of duties imposed by the principles of humanity will be the surest guides for the conduct of soldiers and sailors and the most efficacious guarantees against abuse."[3] Conscience, "the good German Conscience," as a German newspaper has recently called it, is, as we have seen, an accommodating monitor, and in that forum there are only too many special pleaders. If the German conscience is to be the sole judge of the lawfulness of German practices, then it is a clear case of "the right arm strikes and the left arm is called upon to decide the lawfulness of the blow." It is, indeed, difficult to see, if Baron von Bieberstein's view of international agreements be the right one, why there should be any such agreements at all. The only rule which results from such an Economy of Truth would be: All things are lawful but all are not expedient. And such, indeed, is the conclusion of the German War-Book.

[1] Baron Marschall von Bieberstein. *Actes et Documents* (1907), J. 86.

[2] *Actes et Documents* (1907), I, 281 (Sir Edward Satow).

[3] *Ibid.*, p. 282 (Baron Marschall von Bieberstein), and p. 86.

The cynicism of this book is not more remarkable than its affectation. There are pages in it of the most admirable sentiment—witness those about the turpitude of plundering and the inviolability of neutral territory. Taken by themselves, they form the most scathing denunciation of the conduct of the German army in Belgium that could well be conceived. Let the reader weigh carefully the following :

Movable private property which in earlier times was the incontestable booty of the victor is held by modern opinion to be inviolable. The carrying away of gold, watches, rings, trinkets, or other objects of value is therefore to be regarded as robbery, and correspondingly punishable.

No plundering but downright burglary is it for a man to take away things out of an unoccupied house or at a time when the occupant happens to be absent.

Forced contributions (*Kriegschatzungen*) are denounced as "a form of plundering" rarely, if ever, to be justified, as requisitions may be, by the plea of necessity. The victor has no right, the Book adds, to practise them in order to recoup himself for the cost of the war, or to subsidize an operation against the nation whose territory is in his occupation. To extort them as a ransom from the violence of war is equally unjustifiable : thus out of its own mouth is the German staff condemned and its "buccaneering levies" upon the forlorn inhabitants of Belgium held up to reprobation.

Still more significant are the remarks on the right and duty of neutrals. The inviolability of neutral territory and the sanctity of the Geneva Convention are the only two principles of international law which the German War-Book admits to be laws of perfect obligation. A neutral State, it declares, not only may, but must forbid the passage of troops to the subjects of both belligerents. If either attempts it, the neutral State has the right to resist "with all the means in its power." However

overwhelming the necessity, no belligerent must succumb to the temptation to trespass upon the neutral territory. If this be true of a neutral State it is doubly true of a neutralized State. No one has been so emphatic on this point as the German jurists whose words the War-Book is so fond of praying in aid. The Treaty of London guaranteeing the neutrality of Belgium is declared by them to be "a landmark of progress in the formation of a European polity" and "up till now no Power has dared to violate a guarantee of this kind."[1]

"He who injures a right does injury to the cause of right itself, and in these guarantees lies the express obligation to prevent such things. . . . Nothing could make the situation of Europe more insecure than an egotistical repudiation by the great States of these duties of international fellowship."[2]

The reader will, perhaps, hardly need to be cautioned against the belligerent footnotes with which the General Staff has illuminated the text. They are, as he will observe, mainly directed towards illustrating the peculiar depravity of the French in 1870. They are certainly suspect, and all the more so, because the notorious malpractices of the Germans in that campaign are dismissed, where they are noticed at all, with the airy remark that there were peculiar circumstances, or that they were unauthorized, or that the "necessity of war" afforded sufficient justification. All this is *ex parte*. So too, to a large extent, is the parade of Professors in the footnotes. They are almost always German professors and, as we shall see later, the German professor is, and is compelled to be, a docile instrument of the State.

The book has, of course, a permanent value apart

[1] Holtzendorff, III, pp. 93, 108, 109.

[2] *Ibid.* The whole subject (of the neutrality of Belgium) is examined by the present writer in *War, its Conduct and its Legal Results* (John Murray).

from the light it throws upon contemporary issues. Some of the chapters, such as that on the right and duties of neutrals, represent a carefully considered theory, little tainted by the cynicism which disfigures the rest of the book. It should be of great interest and value to those of us who are engaged in studying the problem of bringing economic pressure to bear upon Germany, by enclosing her in the meshes of conditional contraband. So, too, the chapter on the treatment of Prisoners of War will have a special, and for some a poignant, interest just now. The chapter on the treatment of occupied territory is, of course, of profound significance in view of the present state of Belgium.

CHAPTER II

GERMAN DIPLOMACY AND STATECRAFT

BISMARCK, wrote Hohenlohe, who ultimately succeeded him as Imperial Chancellor, "handles everything with a certain arrogance (*Uebermut*), and this gives him a considerable advantage in dealing with the timid minds of the older European diplomacy." This native arrogance became accentuated after the triumphs of 1870 until, in Hohenlohe's words, Bismarck became "the terror" of all European diplomatists. That word is the clue to German diplomacy. The terrorism which the Germans practise in war they indoctrinate in peace. It was a favourite saying of Clausewitz, whose military writings enjoy an almost apostolic authority in Germany, that War and Peace are but a continuation of one another—"War is nothing but a continuation of political intercourse with a mixture of other means."[1] The same lesson is written large on every page of von der Goltz[2] and Bernhardi[3]. In other words, war projects

[1] *Vom Kriege*, VIII, Kap. 6 (B).

[2] *The Nation in Arms*, sec. 3: "Policy *creates* the total situation in which the State engages in the struggle"; and again, "it is clear that the political action and military action ought always to be closely united."

[3] *Germany and the Next War*: "The appropriate and conscious employment of war as a political means has always led to happy results." And again, "The relations between two States must often be termed *a latent war* which is provisionally being waged in peaceful rivalry. Such a position justifies the employment of hostile methods, just as war itself does, since in such a case both parties are determined to employ them."

its dark shadow over the whole of German diplomacy. The dominant postures in "shining armour" at critical moments in the peace of Europe, and the menacing invocations of the "mailed fist" are not, as is commonly supposed, a passionate idiosyncrasy of the present Emperor. They are a legacy of the Bismarckian tradition. To keep Europe in a perpetual state of nervous apprehension by sombre hints of war was, as we shall see, the favourite method by which Bismarck attained his diplomatic ends. For the German Chancellerie rumours of wars are of only less political efficacy than wars themselves. After 1870, metaphors of war became part of the normal vocabulary of the German Government in times of peace. Not only so but, as will be seen in the two succeeding chapters, a belligerent emotion suffused the temperament of the whole German people, and alike in the State Universities, and the stipendiary Press, there was developed a cult of War for its own sake. The very vocabulary of the Kaiser's speeches has been coined in the lecture-rooms of Berlin University.

Now War is at best but a negative conception and its adoption as the *Credo* of German thinkers since 1870 explains why their contributions to Political Science have been so sterile. More than that, it accounts for the decline in public morality. Politically, Germany, as we shall see, has remained absolutely stagnant. She is now no nearer self-government than she was in 1870; she is much farther removed from it than she was in 1848. The inevitable result has been, that politics have for her come to mean little more than intrigues in high places, the deadly struggle of one contending faction at court against another, with the peace of Europe as pawns in the game. The German Empire, like the Prussian kingdom, has little more than a paper constitution, a *lex imperfecta* as Gneist called it. The

Reichstag has little power and less prestige, and its authority as a representative assembly has been so enervated by the shock tactics practised by the Government in forcing, or threatening to force, a series of dissolutions to punish contumacious behaviour, that it is little better than a debating society. A vote of censure on the Government has absolutely no effect. Of the two powers, the Army and the Reichstag, the Army is infinitely the stronger; there is no law such as our Army Annual Act which subjects it to Parliamentary control. Even the Bundesrath[1] (or Federal Council), strong as it is, is hardly stronger than the German General Staff, for the real force which welds the German Empire together is not so much this council of plenipotentiaries from the States as the military hegemony of Prussia and the military conventions between her and the Southern States by which the latter placed their armies under her supreme control. In this shirt of steel the body politic is enclosed as in a vice.

Nothing illustrates the political lifelessness of Germany, the arrogance of its rulers and the docility of its people (for whom, as will be seen, the former have frequently expressed the utmost contempt) more than the tortuous course of German diplomacy during the years 1870-1900. I shall attempt to sketch very briefly the political history of those years, particularly in the light of the policy of calculated Terrorism by which the German Chancellerie sought to impose its yoke upon Europe. Well did Lord Odo Russell say that "Bismarck's sayings inspired respect" (he might, had he

[1] The Bundesrath is a Second Chamber, a Cabinet or Executive Council, and a Federal Congress of State Governments all in one. Indeed, its resemblance to a Second Chamber is superficial. It can dissolve the Reichstag when it pleases. See Laband, *Die Entwickelung des Bundesraths, Jahrbuch des Oeffentlichen Rechts*, 1907, Vol. I, p. 18, and also his *Deutsches Staatsrecht*, Vol. I, *passim*.

not been speaking as an ambassador, have used, like Hohenlohe, a stronger word) "and his silences apprehension."[1] If it be true, as von der Goltz says it is, that national strategy is the expression of national character and that the German method is, to use his words, "a brutal offensive," nothing could bring out that amiable characteristic more clearly than the study of Bismarck's diplomacy. The German is brutal in war just because he is insolent in peace. Count Herbert "can be very insolent," wrote the servile Busch of Bismarck's son, "which in diplomacy is very useful."[2]

Bismarck's attitude towards treaty obligations is one of the chief clues to the history of the years 1870-1900. International policy, he once wrote, is "a fluid element which under certain conditions will solidify, but on a

[1] I have based the remarks which follow on a close study of German, French, and English authorities—among others upon the following: Bismarck, *Gedanken und Erinnerungen;* Hohenlohe, *Denkwürdigkeiten;* Hanotaux, *Histoire de la France Contemporaine;* de Broglie, *Mission de M. de Gontaut-Biron;* Fitzmaurice, *The Life of Lord Granville.* All these are the works of statesmen who could legitimately say of their times *quorum pars magna fui.* Lord Fitzmaurice's book, apart from its being the work of a statesman, whose knowledge of foreign affairs is equalled by few and surpassed by none, is indispensable to a study of Anglo-German relations since 1850, being based on diplomatic sources, in particular the despatches of Lord Odo Russell. Some passages in *The Life of Lord Lytton* are also illuminating, likewise the essays of that prince of French historians, Albert Sorel. But I have, of course, also gone to the text of treaties and original documents.

[2] The study which follows is based on cosmopolitan materials: The reader must exercise great caution in using political memories such as those of Bismarck. In autobiography, of all forms of history, as Goethe observes in the preface to *Wahrheit und Dichtung,* it is supremely difficult for the writer to escape self-deception: he is so apt to read himself backwards and to mistake society's influence upon him for his influence upon society. In the case of Bismarck in particular, his autobiography often took the form of apologetics, and he invests his actions with a foresight which they did not always possess, while, on the other hand, he is so anxious to depreciate his rivals (particularly Gortchakoff) that he often robs himself of the prestige of victory. Hohenlohe is, in this respect, a far safer guide. He was not as great a man as Bismarck, but he was an infinitely more honest one.

change of atmosphere reverts to its original condition."[1] The process of solidification is represented by the making of treaties; that of melting is a euphemism for the breaking of them. To reinsure German's future by taking out policies in different countries in the form of secret treaties of alliance while concealing the existence of other and conflicting treaties seemed to him not only astute but admirable. Thus having persuaded Austria-Hungary to enter into a Triple Alliance with Germany and Italy by holding out as the inducement the promise of protection against Russia, Bismarck by his own subsequent confession concluded a secret treaty with Russia against Austria. To play off each of these countries against the other by independent professions of exclusive loyalty to both was the *Leit-motif* of his diplomacy. Nor did he treat the collective guarantees of European treaties with any greater respect. Good faith was a negotiable security. Hence his skilful exploitation of the Black Sea clauses of the Treaty of Paris (1856) when he wished to secure the friendly neutrality of Russia during the Franco-Prussian War. Russia, it will be remembered, suddenly and to everyone's surprise, denounced those clauses. The European Powers, on the initiative of England, disputed Russia's claim to denounce *motu proprio* an international obligation of so solemn a character, and Bismarck responded to Lord Granville's initiative in words of ostentatious propriety:

> "That the Russian Circular of the 19th October [denouncing the clauses in question] had *taken him by surprise*. That while he had always held that the Treaty of 1856 pressed with undue severity upon Russia, he entirely disapproved of the manner adopted and the time selected by the Russian Government to force the revision of the Treaty."[2]

[1] *Gedanken und Erinnerungen*, Bd. II, Kap. 29, p. 287.
[2] Notes of Lord Odo Russell, British Ambassador at Berlin, of a

Nearly a generation later Bismarck confessed, and prided himself on the confession, in his Reminiscences,[1] that he had himself instigated Russia to denounce the Black Sea clauses of the Treaty; that he had not only instigated this repudiation but had initiated it as affording "an opportunity of improving our relations with Russia." Russia succumbed to the temptation, but, as Bismarck cheerfully admits, not without reluctance.

This, however, is not all: Europe "saved her face" by putting on record in the Conference of London (1871) a Protocol, subscribed by the Plenipotentiaries of all the Powers, in which it was laid down as

> "an essential principle of the law of nations that no Power can repudiate treaty engagements or modify treaty provisions, except with the consent of the contracting parties by mutual agreement."

This instrument has been called, not inaptly, the foundation of the public law of Europe. It was in virtue of this principle that Russia was obliged to submit the Russo-Turkish Treaty of San Stefano, and with it the fruits of her victories in 1877-8, to the arbitrament of the Congress of Berlin. At that Congress Bismarck played his favourite rôle of "honest broker," and there is considerable ground for believing that he sold the same stock several times over to different clients and pocketed the "differences." What kind of conflicting assurances he gave to the different Powers will never be fully known, but there is good ground for believing that in securing the temporary occupation of Bosnia-Herzegovina he had in mind the ultimate Germanization of the Adriatic, and that domination of the Mediterranean at the expense of England which has long been

conversation with Bismarck, reported in a despatch of November 22nd, 1870, to Lord Granville, and published in the Parliamentary Papers of 1871 [Cd. 245].

[1] *Gedanken und Erinnerungen*, II, Kap. 23.

the dream of German publicists from Treitschke onward.[1] What, however, clearly emerged from the Congress, and was embodied in Article XXV of the Berlin Treaty, was, that Austria was to occupy and administer Bosnia-Herzegovina under a European mandate. She acquired lordship without ownership; in other words, the territory became a Protectorate. Her title, as it originated in, so it was limited by, the Treaty of Berlin. Exactly thirty years later, in the autumn of 1908, Austria, acting in concert with Germany, abused her fiduciary position and without any mandate from the Powers annexed the territory of which she had been made the guardian. This arbitrary action was a violation of the principle to which she and Germany had subscribed at the London Conference, and Sir Edward Grey attempted, as Lord Granville had done before him, to preserve the credit of the public law of Europe by a conference which should consider the compensation due to Servia for an act which so gravely compromised her security. Russia, France, and Italy joined with Great Britain in this heroic, if belated, attempt to save the international situation. It was at this moment (March, 1909) that Germany appeared on the scene "in shining armour," despatched a veiled ultimatum to Russia, with a covert threat to mobilize, and forced her to abandon her advocacy of the claims of Servia and, with them, of the public law of Europe.

Thus did History repeat itself. Germany stood forth once again as the chartered libertine of Europe whom no faith could bind and no duty oblige. May it not be said of her what Machiavelli said of Alexander Borgia: "E non fu mai uomo che avesse maggiore efficacia in

[1] See the remarkable articles, based on unpublished documents by M. Hanotaux, in the *Revue des deux Mondes*, Sept. 15th and Oct. 1st, 1908, on "Le Congrès de Berlin."

asseverare, e che con maggiori giuramenti affermasse una cosa, e che l'osservasse meno."[1]

It would carry me far beyond the limits of this Introduction to trace in like detail the German policy of *Scharfmachcrei* which consisted, to use the mordant phrase of M. Hanotaux, in putting up to auction that which is not yours to sell and, not infrequently, knocking it down to more than one bidder. That Bismarck encouraged Russian ambitions in Asia and French ambitions in Africa with the view of making mischief between each of them and England is notorious. In his earlier attitude he was content to play the rôle of *tertius gaudens*; in his later he was an active *agent provocateur*—particularly during the years 1883-1885, when he joined in the scramble for Africa. The earlier attitude is well indicated in Hohenlohe's revelations, that Bismarck regarded French colonial operations as a timely diversion from the Rhine, and would not be at all sorry "to see the English and French locomotives come into collision," and a French annexation of Morocco would have had his benevolent approval. After 1883 his attitude was less passive but not less mischievous. Ten years earlier he had told Lord Odo Russell that colonies "would only be a cause of weakness" to Germany. But by 1883 he had been slowly and reluctantly converted to the militant policy of the Colonial party and the cry of *Welt politik* was as good as a war-scare for electioneering purposes. It was in these days that hatred of England, a hatred conceived in jealousy of her world-Empire, was brought forth,[2] and the obstetrics of Treitschke materially assisted its birth. Bismarck,

[1] "No man ever had a more effective manner of asseverating, or made promises with more solemn protestations, or observed them less," *Il Principe*, Cap. 18.

[2] Cf. Lord Ampthill's despatch (Aug. 25th, 1884). "He has dis-

however, as readers of his Reminiscences are well aware, had an intellectual dislike of England based on her forms of government. He loved the darker ways of diplomacy and he thought our Cabinet system fatal to them. He had an intense dislike of Parliamentarism, he despised alliances "for which the Crown is not answerable but only the fleeting cabinet of the day," and above all he hated plain dealing and publicity. "It is astonishing," wrote Lord Ampthill, "how cordially Bismarck hates our Blue Books."

The story of Bismarck's diplomatic relations with England during these years exhibits the same features of duplicity tempered by violence as marked his relations with the rest of Europe. He acquired Samoa by a deliberate breach of faith, and his pretence of negotiations with this country to delimit the frontiers of English and German acquisitions while he stole a march upon us were properly stigmatized by the Colonial Office as "shabby behaviour." Whether he really egged on France to "take Tunis" in order to embroil her with England will perhaps never be really known,[1] but it was widely suspected in France that his motives in supporting, if not instigating,[2] the colonial policy of Jules Ferry would not bear a very close examination. That he regarded it as a timely diversion from the Rhine is certain; that he encouraged it as a promising embarrassment to England is probable. There can be no

covered an unexplored mine of popularity in starting a colonial policy which public opinion persuades itself to be anti-English, and the slumbering theoretical envy of the Germans at our wealth and our freedom has taken the form of abuse of everything English in the Press."—Fitzmaurice's *Granville*, II, 358.

[1] For a careful examination of the story see Fitzmaurice, II, 234 and 429.

[2] There is a spirited, but not altogether convincing, vindication of Ferry in Rambaud's *Jules Ferry*, p. 395. It is not Ferry's honesty that is in question, but his perspicacity.

doubt that much the same construction is to be put on his attitude towards Russia's aspirations in Asia; that they should divert Russia from Europe was necessary; that they might entangle her with England was desirable.

Fear of Russia has, in fact, always been an obsession of the German Government. That fear is the just Nemesis of Frederick the Great's responsibility for the infamous Partition of Poland. The reader who wants to understand the causes of this, cannot do better than study an old map of the kingdom of Poland, and compare it with a map of Poland after the first and second Partitions. The effect of those cynical transactions was to extinguish an ancient "buffer state," separating Prussia, Austria, and Russia, and by extinguishing it to bring them into menacing contiguity with each other. Never has any crime so haunted its perpetrators. Poland has been the permanent distraction of the three nations who dismembered her, each perpetually suspicious of the other two, and this fact is the main clue to the history of Eastern Europe.[1] The fear of Russia, and of a Russo-French or a Russo-Austrian alliance, is the dominant feature of Bismarck's diplomacy. He was, indeed, the evil genius of Russia for, by his own confession,[2] he intrigued to prevent her from pursuing a liberal policy towards Poland, for fear that she would thereby be drawn into friendship with France. To induce her to break faith with Russia, her Polish subjects in one case, and with Europe in

[1] Its profound reactions have been worked out by the hand of a master in Sorel's *L'Europe et la Révolution française*, and, in particular, in his *La Question d'Orient*, which is a searching analysis of these tortuous intrigues.

[2] Cf. Bismarck's *Erinnerungen* (the chapter on the Alvensleben Convention): "It was our interest to oppose the party in the Russian Cabinet which had Polish proclivities . . . because a Polish-Russian policy was calculated to vitalize that Russo-French sympathy against which Prussia's effort had been directed since the Peace of Paris."

another—the former by suppressing the Polish constitutional movement; the latter by repudiating the Black Sea clauses—was to isolate her from Europe. German writers to-day affect to speak of "Muscovite barbarism" and "Oriental despotism," but it has been the deliberate policy of Germany to cut Russia off from the main stream of European civilization—to turn her face Eastwards, thereby Bismarck hoped, to quote his own words, to "weaken her pressure on our Eastern frontiers."

But Bismarck's contempt for treaties and his love for setting other Powers by the ears were venial compared with his policy of Terrorism. His attitude to France from 1870 to the day of his retirement from office—and it has been mis-stated many times by his successors—was very much that which Newman ascribed to the Erastian view of the treatment of the church—"to keep her low" and in a perpetual state of terror-stricken servility. That this is no exaggeration will be apparent from what follows here about the war scares with which he terrified France, and with France Europe also, in the years 1873-5, the years, when, as our ambassador at Paris, Lord Lytton, has put it, he "played with her like a cat with a mouse."[1] Perhaps the most illuminating account of these tenebrous proceedings is to be derived from Hohenlohe, who accepted the offer of the German Embassy at Paris in May, 1874. The post was no easy one. There had already been a "scare" in the previous December, when Bismarck menaced the Duc de Broglie with war, using the attitude of the French Bishops as a pretext;[2] and, although Hohen-

[1] *Life of Lord Lytton*, II, pp. 260 *seq.* On the whole story see Hohenlohe *passim*; also Hanotaux, Vol. III, ch. iv; de Broglie's *Gontaut-Biron* and Fitzmaurice's *Granville*. The cheerfully malevolent Busch is also sometimes illuminating.

[2] It was on this occasion that, according to Hanotaux, quoting from a private document of the Duc Decazes, Lord Odo Russell reported an interview with Bismarck, in which the latter said he wanted "to finish France off."

lohe's appointment was at first regarded as an eirenicon, there followed a period of extreme tension, when, as the Duc Decazes subsequently confessed, French Ministers were "living at the mercy of the smallest incident, the least mistake."

The truth about the subsequent war scare of 1875 is still a matter of speculation, but the documents published of late years by de Broglie and Hanotaux, and the despatches of Lord Odo Russell, have thrown considerable suspicion of a very positive kind on Bismarck's plea that it was all a malicious invention of Gontaut-Biron, the French Ambassador, and of Gortchakoff. A careful collation of the passages in Hohenlohe's Memoirs goes far to confirm these suspicions, and, incidentally, to reveal Bismarck's inner diplomacy in a very sinister light. Hohenlohe was appointed to succeed the unhappy Arnim, who had made himself obnoxious to Bismarck by his independence, and he was instructed by the Chancellor, that it was to the interest of Germany to see that France should become "a weak Republic and anarchical," so as to be a negligible quantity in European politics, on which the Emperor William I remarked to Hohenlohe that "that was not a policy," and was not "decent," subsequently confiding to Hohenlohe that Bismarck was [illegible] "to drive him more and more into war"; whereupon Hohenlohe confidently remarked: "I know nothing of it, and I should be the first to hear of it." Hohenlohe soon found reason to change his opinion. As Gortchakoff remarked to Decazes, "they have a difficult way with diplomatists at Berlin," and Hohenlohe was instructed to press the French Ministry for the recall of Gontaut-Biron, against whom Bismarck complained on account of his Legitimist opinions and his friendship with the Empress Augusta. Thereupon, that supple and elusive diplomat, the Duc Decazes, parried by inviting an

explanation of the menacing words which Gontaut-Biron declared had been uttered to him by Radowitz, a Councillor of Legation in Berlin, to the effect that "it would be both politic and Christian to declare war at once," the Duke adding shrewdly: "One doesn't invent these things." Hohenlohe in his perplexity tried to get at the truth from Bismarck, and met with what seems to us a most disingenuous explanation. Bismarck said Radowitz denied the whole thing, but added that, even if he had said it, Gontaut-Biron had no right to report it. He admitted, however, that Radowitz made mischief and "egged on" Bülow, the Foreign Secretary. "You may be sure," he added, "that these two between them would land us in a war in four weeks if I didn't act as safety-valve." Hohenlohe took advantage of this confession to press for the dispatch of Radowitz to some distant Embassy "to cool himself." To this Bismarck assented, but a few days later declared that Radowitz was indispensable. When Hohenlohe attempted to sound Bismarck on the subject the Chancellor showed the utmost reserve. After the war scare had passed, Decazes related to Hohenlohe an earlier example of Imperial truculence on the part of Arnim, who, on leaving after a call, turned round as he reached the door and called out: "I have forgotten one thing. Recollect that I forbid you to get possession of Tunis"; and when Decazes affected to regard the matter as a jest, Arnim repeated with emphasis: "Yes, I forbid it." Hohenlohe adds that an examination of his predecessor's papers convinced him that Arnim did not speak without express authorization. When the elections for the French Chamber are imminent in the autumn of 1877, Bismarck informs Hohenlohe that Germany will adopt "a threatening attitude," but "the scene will be laid in Berlin, not in Paris." The usual Press campaign followed,

much to the vexation of the Emperor, who complained to Hohenlohe that the result of these "pin-pricks" (Nadelstiche) would provoke the French people beyond endurance.

In studying this calculated truculence we have to remember that in Germany foreign and domestic policy are inextricably interwoven. A war scare is with the German Government a favourite method of bringing the Reichstag to a docile frame of mind and diverting it from inconvenient criticism of the Government's policy at home. Moreover, just as war is, in von der Goltz's words, a reflection of national character, so is diplomacy. A nation's character is revealed in its diplomacy just as a man's breeding is revealed in his conversation.[1] We must therefore take into account the polity of Germany and its political standards.

The picture of the Prussian autocracy in the later days of Bismarck's rule which we can reconstruct from different entries in Hohenlohe's Journal from the year 1885 onwards is a very sombre one. It is a picture of suspicion, treachery, vacillation, and calumny in high places which remind one of nothing so much as the Court of the later Bourbons. It is a regime of violence abroad and dissensions at home. Bismarck's health was failing him, and with his health his temper. He complained to Hohenlohe that his head "grew hot" the moment he worked, and the latter hardly dared to dispute with him on the gravest matters of State. Readers of Busch will remember his frank disclosures of the anarchy of the Foreign Office when Bismarck was away: "if the Chief gives violent instructions, they are carried out with still greater violence." In Hohenlohe we begin to see all the grave implications of this. Bismarck, with what Lord Odo Russell called his passion

[1] Cf. Albert Sorel: "La diplomatie est l'expression des moeurs politiques"; and cf. his remarkable essay, "La Diplomatie et le progrés," in *Essais d'histoire et de critique.*

for authority, was fond of sneering at English foreign policy as liable to be blown about with every wind of political doctrine; but if Parliamentary control has its defects, autocracy has defects more insidious still. Will becomes caprice, and foreign relations are at the mercy of bureaucrats who have no sense of responsibility so long as they can adroitly flatter their master. When a bureaucrat trained under this system arrives at power, the result may be nothing less than disastrous. This was what happened when Bismarck's instrument, Holstein, concentrated power into his own hands at the Foreign Office; and as the *Neue Freie Presse*[1] pointed out in its disclosures on his fall (1906), the results are writ large in the narrowly averted catastrophe of a war with France in 1905. Bismarck's disciples had all his calculated violence without its timeliness. In the Foreign Office, Hohenlohe discovered a kind of anarchical "republicanism"—"nobody," in Bismarck's frequent absence "will own responsibility to any one else." "Bismarck is nervously excitable," writes Hohenlohe in March, 1885, "and harasses his subordinates and frightens them, so that they see more behind his expression than there really is." Like most small men, in terror themselves, they terrorized others. Moreover, the disinclination of the Prussian mind, which Bismarck himself once noted, to accept any responsibility which is not covered by instructions, tended to reduce the German Ambassadors abroad to the level of mere aides-de-camp. Hohenlohe found himself involved in the same embarrassments at Paris as Count Münster did in London. Any one who has studied the inner history of German foreign policy must have divined a secret diplomacy as devious of its kind as that

[1] June 3rd, 1906, in a remarkable article entitled "Holstein," which is a close study of the inner organization of the German Foreign Office and its traditions.

of Louis XV. Of its exact bearings little is known, but a great deal may reasonably be suspected. There is always the triple diplomacy of the Court, the Imperial Chancery, and lastly the Diplomatic Service, which is not necessarily in the confidence of either.

The same debilitating influences of a dictatorship were at work in Ministerial and Parliamentary life. Bismarck had an equal contempt for the collective responsibility of Ministers and for Parliamentary control. Having done his best to deprive the Members of the Reichstag of power, he was annoyed at their irresponsibility. He called men like Bennigsen and Windhorst silly schoolboy politicians (Karlchen-Miesnick-Tertianen) or " lying scoundrels " (verlogene Halunken). He was surprised that representation without control resulted in faction. It is the Nemesis of his own political doctrines. When he met with opposition he clamoured for repressive measures, and could not understand some of the scruples of the Liberals as to the exceptional laws against the Socialists. Moreover, having tried, like another Richelieu, to reduce his fellow-Ministers to the position of clerks, he was annoyed at their want of corporate spirit, and when they refused to follow him into his retirement, he declaimed against their apostasy in having " left him in the lurch." He talked at one time of abolishing the Reichstag ; at another of having a special post created for himself as " General-Adjutant." He complained of overwork—and his energy was Titanic—but he insisted on keeping his eye on everything, conscientiously enough, because, he tells Hohenlohe, " he could not put his name to things which did not reflect his own mind." But perhaps the gravest moral of it all is the Nemesis of deception. It is difficult to be both loved and feared, said Machiavelli. There is a sombre irony in the remark of the Czar to the Emperor in 1892, which the latter repeated to Hohenlohe.

Bismarck had been compelled to retire because he had failed to induce the Emperor to violate Germany's contractual obligations to Austria by renewing his secret agreement with Russia, and he consoled himself in his retirement with the somewhat unctuous reflection that he was a martyr to the cause of Russo-German friendship, betrayed, according to him, by Caprivi. "Do you know," said the young Emperor (in August, 1892), "the Czar has told me he has every trust in Caprivi; whereas when Bismarck has said anything to him he has always had the conviction that "he is tricking me?" We are reminded of the occasion when Talleyrand told the truth so frankly that his interlocutor persisted in regarding it as an elaborate form of deception. After all, there are advantages, even in diplomacy, in being what Schuvaloff called Caprivi, a "too honest man." It was the same with the domestic atmosphere. Bismarck, an adept at deceiving, is always complaining of deception; a master of intrigue, he is always declaiming against the intrigues of others. He inveighs against the Empress Augusta: "for fifty years she has been my opponent with the Emperor." He lived in an atmosphere of distrust, he was often insolent, and always suspicious. It affected all his diplomatic intercourse, and was not at all to Hohenlohe's taste. "He handles everything with a certain arrogance (*Uebermut*)," once wrote Hohenlohe (as we have already said) of a discussion with him over foreign affairs. "*This has always been his way.*"

All these tendencies came to a head when the sceptre passed from the infirm hands of William I to those of a dying King, around whose death-bed the mil ·ry party and the Chancellor's party began to intrigue for influence over the young Prince whose advent to empire was hourly expected. Of these intrigues Hohenlohe, who was now Statthalter of Alsace-Lorraine, soon began

to feel the effects without at first discovering the cause. He loved the people of the Reichsland, was a friend of France, and an advocate of liberal institutions, and in this spirit he strove to administer the incorporated territories. But the military party worked against him, hoping to secure the abolition of the moderate measure of local government and Reichstag representation which the Provinces possessed; and when the latter returned a hostile majority to the Reichstag they redoubled their efforts for a policy of "Thorough." Bismarck gave but a lukewarm support to Hohenlohe and insisted on the enforcement of drastic passport regulations, which, combined with the Schnaebele affair (on which the Memoirs are very reticent), almost provoked France to War—naturally enough, in the opinion of Hohenlohe, and inevitably, according to the forebodings of the German Military Attaché at Paris. To Hohenlohe's imploring representations Bismarck replied with grim jests about Alva's rule in the Netherlands, adding that it is all done to show the French " that their noise doesn't alarm us." Meanwhile Switzerland was alienated, France injured, and Austria suspicious. But Hohenlohe, after inquiries in Berlin and Baden, began to discover the reason. Bismarck feared the influence of the military party over the martial spirit of Prince William, and was determined to show himsef equally militant in order to secure his dynasty. " His sole object is to get his son Herbert into the saddle," said Bleichröder; so there is no hope of an improvement in Alsace-Lorraine,"—although Prince Herbert alienated everybody by his insolence, which was so gross that the Prince of Wales (King Edward), at this time in Berlin, declared that he could scarcely restrain himself from showing him the door. The leader of the military party, Waldersee, was hardly more public-spirited. He had, according to Bis-

marck, been made Chief of Staff by Moltke, over the heads of more competent men, because he was more docile than they. Between these military and civil autocracies the struggle for the possession of the present Emperor raged remorselessly, and with appalling levity they made the peace of two great nations the pawns in the game. The young Emperor is seen in Hohenlohe's Memoirs feeling his way, groping in the dark; but those who, like the Grand Duke of Baden, knew the strength of his character foresaw the end. At first, he "doesn't trust himself to hold a different opinion from Bismarck"; but, "as soon as he perceives that Bismarck doesn't tell him everything," predicted the Grand Duke, "there will be trouble." Meanwhile Waldersee was working for war, for no better reason than that he was getting old, and spoiling for a fight before it was too late for him to take the field.

For Bismarck's dismissal there were various causes: differences in domestic policy and in foreign, and an absolute *impasse* on the question whether Bismarck's fellow-Ministers were to be treated as colleagues or subordinates. "Bismarck," said Caprivi afterwards, "had made a treaty with Russia by which we guaranteed her a free hand in Bulgaria and Constantinople, and Russia bound herself to remain neutral in a war with France. That would have meant the shattering of the Triple Alliance." Moreover, the relations of Emperor and Chancellor were, at the last, disfigured by violent scenes, during which the Kaiser, according to the testimony of everyone, showed the most astonishing dignity and restraint. But it may all be summed up in the words of the Grand Duke of Baden, re-echoed by the Emperor to Hohenlohe, it had to be a choice between the dynasties of Hohenzollern and Bismarck. The end came to such a period of fear, agony, irony, despair, recrimination, and catastrophic laughter as only the

pen of a Tacitus could adequately describe. Bismarck's last years, both of power and retirement, were those of a lost soul. Having tried to intrigue with foreign Ambassadors against his Sovereign before his retirement, he tried to mobilize the Press against him after he had retired, and even stooped to join hands with his old rival, Waldersee, for the overthrow of his successor, Caprivi, being quite indifferent, complained the Kaiser bitterly, to what might happen afterwards. "It is sad to think," said the Emperor of Austria to Hohenlohe, "that such a man can sink so low."

When Bismarck was dismissed every one raised his head. It seemed to Hohenlohe to be at last a case of the beatitude: "the meek shall inherit the earth." Holstein, the Under-Secretary, who, to the disgust of Bismarck, refused to follow his chief and who now quietly made himself the residuary legatee of the whole political inheritance of the Foreign Office, intended by Bismarck for his son, freely criticized his ex-chief's policy in a conversation with Hohenlohe:

"He adduced as errors of Bismarck's policy: The Berlin Congress, the mediation in China in favour of France, the prevention of the conflict between England and Russia in Afghanistan, and the whole of his *tracasseries* with Russia. As to his recent plan of leaving Austria in the lurch, he says we should then have made ourselves so contemptible that we should have become isolated and dependent on Russia."

Bismarck, whom Hohenlohe visited in his retirement, with a strange want of patriotism and of perspicuity, pursued "his favourite theme" and inveighed against the envy (*der Neid*) of the German people and their incurable particularism. He never divined how much his jealous autocracy had fostered these tendencies. One may hazard the opinion that the Germans are no more wanting in public spirit and political capacity

than any other nation ; but if they are deprived of the rights of private judgment and the exercise of political ability, they are no more likely to be immune from the corresponding disabilities. Certainly, in no country where public men are accustomed to the exercise of mutual tolerance and loyal co-operation by the practice of Cabinet government, and where public opinion has healthy play, would such an exhibition of disloyalty and slander as is here exhibited be tolerated, or even possible. When in 1895 Caprivi succumbed to the intrigues of the military caste and the Agrarian Party, Hohenlohe, now in his seventy-sixth year, was entreated to come to the rescue, his accession being regarded as the only security for German unity. To his eternal credit, Hohenlohe accepted ; but, if we may read between the lines of the scanty extracts here vouchsafed from the record of a Ministerial activity of six years, we may conjecture that it was mostly labour and sorrow. He was opposed to agrarianism and repressive measures, and anxious "to get on with the Reichstag," seeing in the forms of public discussion the only security for the public peace. But " the Prussian Junkers could not tolerate South German Liberalism," and the most powerful political caste in the world, with the Army and the King on their side, appear to have been too much for him. His retirement in 1900 marks the end of a fugitive attempt at something like a liberal policy in Germany, and during the fourteen years which have elapsed since that event autocracy has held undisputed sway in Germany. The history of these latter years is fresh in the minds of most students of public affairs, and we will not attempt to pursue it here.

CHAPTER III

GERMAN CULTURE

THE ACADEMIC GARRISON

NOTHING is so characteristic of the German nation as its astonishing single-mindedness—using that term in a mental and not a moral sense. Since Prussia established her ascendancy the nation has developed an immense concentration of purpose. If the military men are not more belligerent than the diplomatists, the diplomatists are not more belligerent than the professors. A single purpose seems to animate them: it is to proclaim the spiritual efficacy, and the eternal necessity, of War.

Already there are signs that the German professors are taking the field. Their mobilization is apparently not yet complete, but we may expect before long to see their whole force, from the oldest Professor Emeritus down to the youngest *Privat-dozent*, sharpening their pens against us. Professors Harnack, Haeckel, and Eucken have already made a reconnaissance in force, and in language which might have come straight from the armoury of Treitschke have denounced the mingled cupidity and hypocrisy with which we, so they say, have joined forces with Muscovite "barbarism" against Teutonic culture. This, we may feel sure, is only the beginning.

German professors have a way of making history as well as writing it, and the Prussian Government has always attached the greatest importance to taking away

its enemy's character before it despoils him of his goods. Long before the wars of 1866 and 1870 the seminars of the Prussian universities were as busy forging title-deeds to the smaller German states and to Alsace-Lorraine as any mediæval scriptorium, and not less ingenious. In the Franco-Prussian War the professors—Treitschke Mommsen, Sybel—were the first to take the field and the last to quit it. Theirs it was to exploit the secular hatreds of the past. Even Ranke, the nearest approach to "a good European" of which German schools of history could boast, was implacable. When asked by Thiers on whom, the Third Empire having fallen, the Germans were continuing to make war, he replied, "On Louis XIV."

Hardly were the results achieved before a casuistry was developed to justify them. Sybel's apologetics in "Die Begründung des deutschen Reichs" began it; others have gone far beyond them. "Blessed be the hand that traced those lines," is Professor Delbrück's benediction on the forgery of the Ems telegram; and in language which is almost a paraphrase of Bismarck's cynical declaration that a diplomatic pretext for a war can always be found when you want one, he has laid it down that "a good diplomat" should always have his quiver full of such barbed arrows. So, too, Sybel on Frederick's complicity in the Second Partition of an inoffensive Poland anticipates in almost so many words the recent sophistry of the Imperial Chancellor on the violation of the neutrality of Belgium. "Wrong? I grant you —a violation of law in the most literal sense of the word." But, he adds, necessity knows no law, and, "to sum it up," after all, Prussia "thereby gained a very considerable territory." And thus Treitschke on the question of the duchies, or again, to go farther afield, Mommsen on the inexorable "law" that the race is always to the swift and the battle to the strong. Frederick the Great

surely knew his fellow-countrymen when he said with characteristic cynicism: "I begin by taking; I can always find pedants to prove my rights afterwards." Not the Chancelleries only, but even the General Staff has worked hand in glove with the lecture-room. When Bernhardi and von der Goltz exalt the spiritual efficacy of war they are repeating almost word for word the language of Treitschke. Not a faculty but ministers to German statecraft in its turn. The economists, notably von Halle and Wagner, have been as busy and pragmatical as the historians—theirs is the doctrine of Prussian military hegemony upon a basis of agrarianism, of the absorption of Holland, and of "the future upon the water." The very vocabulary of the Kaiser's speeches has been coined in the lecture-rooms of Berlin University.

To understand the potency of these academic influences in German policy one must know something of the constitution of the German universities. In no country is the control of the Government over the universities so strong; nowhere is it so vigilant. Political favour may make or mar an academic career; the complaisant professor is decorated, the contumacious is cashiered. German academic history is full of examples. Treitschke, Sybel, even Mommsen all felt the weight of royal displeasure at one period or another. The present Emperor vetoed the award of the Verdun prize to Sybel because in his history of Prussian policy he had exalted Bismarck at the expense of the Hohenzollerns, and he threatened to close the archives to Treitschke. Even Mommsen had at one time to learn the steepness of alien stairs.

On the other hand, no Government recognizes so readily the value of a professor who is docile—he is of more value than many Pomeranian Grenadiers. Bismarck invited Treitschke to accompany the army of

Sadowa as a writer of military bulletins, and both he and Sybel were, after due caution, commissioned to write those apologetics of Prussian policy which are classics of their kind. Most German professors have at one time or another been publicists, and the *Grenzboten* and the *Preussische Jahrücher* maintain the polemical traditions of Sybel's "Historische Zeitschrift." Moreover, the German university system, with the singular freedom in the choice of lectures and universities, which it leaves to the student, tends to make a professor's classes depend for their success on his power of attracting a public by trenchant oratory. Well has Acton said that the "garrison" of distinguished historians that prepared the Prussian supremacy, together with their own, "hold Berlin like a fortress." They still hold it and their science of fortification has not changed.

It is not necessary to recapitulate here the earlier phases of this politico-historical school whose motto found expression in Droysen's aphorism, "The statesman is the historian in practice," and whose moral was "Die Weltgeschichte ist das Weltgericht," or, to put it less pretentiously, "Nothing succeeds like success." All of them, Niebuhr, Mommsen, Droysen, Häusser, Sybel, Treitschke, have this in common: that they are merciless to the rights of small nationalities. This was no accident; it was due to the magnetism exercised upon their minds by the hegemony of Prussia and by their opposition to the idea of a loose confederation of small States. They were almost equally united in a common detestation of France and could find no word too hard for her polity, her literature, her ideals, and her people. "Sodom" and "Babylon" were the best they could spare her. "Die Nation ist unser Feind" wrote Treitschke in 1870, and "we must draw her teeth." Even Ranke declared that everything good in Germany

had risen by way of opposition to French influences. The intellectual war was carried into every field and epoch of history, and all the institutions of modern civilization were traced by writers like Waitz and Maurer to the early German tribes uncorrupted by Roman influences. The same spirit was apparent in Sybel's hatred of the French Revolution and all its works.

This is not the place to expound the intellectual revenge which French scholars like Fustel de Coulanges in the one sphere, and Albert Sorel in the other, afterwards took upon this insensate chauvinism of the chair. Sufficient to say that this cult of war and gospel of hate have narrowed the outlook of German thought ever since, as Renan warned Strauss they would, and have left Germany in an intellectual isolation from the rest of Europe only to be paralleled by her moral isolation of to-day. It was useless for Renan to remind German scholars that pride is the only vice which is punished in this world. "We Germans," retorted Mommsen, "are not modest and don't pretend to be." The words are almost the echo of that "thrasonic brag" with which Bismarck one day electrified the Reichstag.

In the academic circles of to-day much of the hate formerly vented upon France is now diverted to England. In this, Treitschke set the fashion. Nothing delighted him more than to garnish his immensely popular lectures with uproarious jests at England—"the hypocrite who, with a Bible in one hand and an opium pipe in the other, scatters over the universe the benefits of civilization." But there was always method in his madness. Treitschke was one of the first to demand for Germany "a place in the sun"—this commonplace of Imperial speeches was, I believe, coined by Sybel—and to press for the creation of a German Navy which should do what "Europe" had failed to do—set bounds to the crushing domination of the British

Fleet and "restore the Mediterranean to the Mediterranean peoples" by snatching back Malta, Corfu, and Gibraltar. The seed fell on fruitful soil. A young economist, the late Professor von Halle, whose vehement lectures I used to attend when a student at Berlin University, worked out the maritime possibilities of German ambitions in "Volks-und Seewirthschaft," and his method is highly significant in view of the recent ultimatum delivered by Germany to Belgium. It was nothing less than the seduction of Holland by economic bribes into promising to Germany the abandonment of the neutrality of her ports in the event of war. Thereby, and thereby alone, he argued, Germany would be reconciled to the "monstrosity" (*Unding*) of the mouth of the Rhine being in non-German hands. In return Germany would take Holland and her colonies under her "protection." To the same effect writes Professor Karl Lamprecht in his "Zur jüngsten deutschen Vergangenheit," seizing upon the Boer war to demonstrate to Holland that England is the enemy. The same argument was put forward by Professor Lexis. This was in the true line of academic tradition. Even the discreet and temperate Ranke once counselled Bismarck to annex Switzerland.

Such, in briefest outline, is the story of the academic "garrison." Of the lesser lansquenets, the horde of privat-dozents and obscurer professors, whose intellectual folly is only equalled by their audacity, and who are the mainstay of the Pan-German movement, I have said nothing. It may be doubted whether the second generation can show anything like the intellectual prestige which, with all their intemperance, distinguished their predecessors. But they have all laid to heart Treitschke's maxim, "Be governmental," honour the King, worship the State, and "believe that no salvation is possible except by the annihilation of the smaller

States." It is a strange ending to the Germany of Kant and Goethe.

> Nur der verdient sich Freiheit wie das Leben
> Der täglich sie erobern muss—

The noble lines of Goethe have now a variant reading—"He alone achieves freedom and existence who seeks to repeat his conquests at the expense of others" might be the motto of the Germans of to-day. But as they have appealed to History, so will History answer them.

CHAPTER IV

GERMAN THOUGHT

TREITSCHKE

In a pamphlet of mordant irony addressed to "Messieurs les Ministres du culte évangélique de l'armée du roi de Prusse" in the dark days of 1870, Fustel de Coulange warned these evangelical camp-followers of the consequences to German civilization of their doctrines of a Holy War. "Your error is not a crime but it makes you commit one, for it leads you to preach war which is the greatest of all crimes." It was not impossible, he added, that that very war might be the beginning of the decadence of Germany, even as it would inaugurate the revival of France. History has proved him a true prophet, but it has required more than a generation to show with what subtlety the moral poison of such teaching has penetrated into German life and character. The great apostle of that teaching was Treitschke who, though not indeed a theologian, was characteristically fond of praying in aid the vocabulary of theology. "Every intelligent theologian understands perfectly well," he wrote, "that the Biblical saying 'Thou shalt not kill' ought no more to be interpreted literally than the apostolic injunction to give one's goods to the poor." He called in the Old Testament to redress the balance of the New. "The doctrines of the apple of discord and of original sin are the great facts which the pages of History everywhere reveal."

To-day, everybody talks of Treitschke, though I doubt if half a dozen people in England have read him. His brilliant essays, *Historische und politische Aufsätze*, illuminating almost every aspect of German controversy, have never been translated; neither has his *Politik*, a searching and cynical examination of the foundations of Political Science which exalts the State at the expense of Society; and his *Deutsche Geschichte*, which was designed to be the supreme apologetic of Prussian policy, is also unknown in our tongue. But in Germany their vogue has been and still is enormous; they are to Germans what Carlyle and Macaulay were to us. Treitschke, indeed, has much in common with Carlyle; the same contempt for Parliaments and constitutional freedom; the same worship of the strong man armed; the same sombre, almost savage, irony, and, let it not be forgotten, the same deep moral fervour. His character was irreproachable. At the age of fifteen he wrote down this motto for his own: "To be always upright, honest, moral, to become a man, a man useful to humanity, a brave man—these are my ambitions." This high ideal he strove manfully to realize. But he was a doctrinaire, and of all doctrinaires the conscientious doctrinaire is the most dangerous. Undoubtedly, in his case, as in that of so many other enlightened Germans—Sybel, for example—his apostasy from Liberalism dated from the moment of his conviction that the only hope for German unity lay not in Parliaments but in the military hegemony of Prussia. The bloody triumphs of the Austro-Prussian War convinced him that the salvation of Germany was "only possible by the annihilation of small States," that States rest on force, not consent, that success is the supreme test of merit, and that the issues of war are the judgment of God. He was singularly free from sophistry and never attempted, like Sybel, to defend the Ems telegram

by the disingenuous plea that "an abbreviation is not a falsification"; it was enough for him that the trick achieved its purpose. And he had a frank contempt for those Prussian jurists who attempted to find a legal title to Schleswig-Holstein; the real truth of the matter, he roundly declared, was that the annexation of the Duchies was necessary for the realization of German aims. When he writes about war he writes without any sanctimonious cant:

> It is not for Germans to repeat the commonplaces of the apostles of peace or of the priests of Mammon, nor should they close their eyes before the cruel necessities of the age. Yes, ours is an epoch of war, our age is an age of iron. If the strong get the better of the weak, it is an inexorable law of life. Those wars of hunger which we still see to-day amongst negro tribes are as necessary for the economic conditions of the heart of Africa as the sacred war which a people undertakes to preserve the most precious belongings of its moral culture. There as here it is a struggle for life, here for a moral good, there for a material good.

Readers of Bernhardi will recognize here the source of Bernhardi's inspiration. If Treitschke was a casuist at all—and as a rule he is refreshingly, if brutally, frank—his was the supreme casuistry of the doctrine that the end justifies the means. That the means may corrupt the end or become an end in themselves he never saw, or only saw it at the end of his life. He honestly believed that war was the nurse of manly sentiment and heroic enterprise, he feared the commercialism of modern times, and despised England because he judged her wars to have always been undertaken with a view to the conquest of markets. He sneers at the Englishman who "scatters the blessings of civilization with a Bible in one hand and an opium pipe in the other." He honestly believed that Germany exhibited a purity of domestic life, a pastoral simplicity, and a deep religious faith

to which no European country could approach, and at the time he wrote the picture was not overdrawn. He has written passages of noble and tender sentiment, in which he celebrates the piety of the peasant, whose religious exercises were hallowed, wherever the German tongue was spoken, by the massive faith of Luther's great Hymn. Writing of German Protestantism as the corner-stone of German unity, he says:

> Everywhere it has been the solid rampart of our language and customs. In Alsace, as in the mountains of Transylvania and on the distant shores of the Baltic, as long as the peasant shall sing his old canticle
>
> Ein' feste Burg ist unser Gott
>
> German life shall not pass away.

Those who would understand the strength of Treitschke's influence on his generation must not lose sight of these pure elements in his teaching.

But Treitschke was dazzled by the military successes of Prussia in 1866. With that violent reaction against culture which is so common among its professional devotees, and which often makes the men of the pen far more sanguinary than the men of the sword, he derided the old Germany of Goethe and Kant as "a nation of poets and thinkers without a polity" ("Ein staatloses Volk von Dichtern und Denkern"), and almost despised his own intellectual vocation. "Each dragoon," he cried enviously, "who knocks a Croat on the head does far more for the German cause than the finest political brain that ever wielded a trenchant pen." But for his grievous deafness he would, like his father, have chosen the profession of arms. Failing that, he chose to teach. "It is a fine thing," he wrote, "to be master of the younger generation," and he set himself to indoctrinate it with the aim of German unity. He taught from 1859 to 1875 successively at Leipzig, Freiburg, Kiel, and Heidelberg. From 1875 till his death in 1896 he occu-

pied with immense éclat the chair of modern history at Berlin. And so, although a Saxon, he enlisted his pen in the service of Prussia—Prussia which always knows how to attract men of ideas but rarely produces them. In the great roll of German statesmen and thinkers and poets—Stein, Hardenberg, Goethe, Hegel—you will look almost in vain for one who is of Prussian birth. She may pervert them; she cannot create them.

Treitschke's views were, of course, shared by many of his contemporaries. The Seminars of the German Universities were the arsenals that forged the intellectual weapons of the Prussian hegemony. Niebuhr, Ranke, Mommsen, Sybel, Häusser, Droysen, Gneist—all ministered to that ascendency, and they all have this in common—that they are merciless to the claims of the small States whose existence seemed to present an obstacle to Prussian aims. They are also united in common hatred of France, for they feared not only the adventures of Napoleon the Third but the levelling doctrines of the French Revolution. Burke's *Letters on a Regicide Peace* are not more violent against France than the writings of Sybel, Mommsen, and Treitschke. What, however, distinguishes Treitschke from his intellectual confrères is his thoroughness. They made reservations which he scorned to make. Sybel, for example, is often apologetic when he comes to the more questionable episodes in Prussian policy—the partition of Poland, the affairs of the duchies, the Treaty of Bâle, the diplomacy of 1870; Treitschke is disturbed by no such qualms. Bismarck who practised a certain economy in giving Sybel access to official documents for his semi-official history of Prussian policy, *Die Begründung des deutschen Reichs*, had much greater confidence in Treitschke and told him he felt sure he would not be disturbed to find that "our political linen is not as white as it might be." So, too, while others like

Mommsen refused to go the whole way with Bismarck in domestic policy, and clung to their early Radicalism, Treitschke had no compunction about absolutism. He ended, indeed, by becoming the champion of the Junkers, and his history is a kind of hagiography of the Hohenzollerns. "Be governmental" was his succinct maxim, and he rested his hopes for Germany on the bureaucracy and the army. Indeed, if he had had his way, he would have substituted a unity state for the federal system of the German Empire, and would have liked to see all Germany an enlarged Prussia—"ein erweitertes Preussen"—a view which is somewhat difficult to reconcile with his attacks on France as being "politically in a state of perpetual nonage," and on the French Government as hostile to all forms of provincial autonomy.

By a quite natural transition he was led on from his championship of the unity of Germany to a conception of her rôle as a world-power. He is the true father of Welt-politik. Much of what he writes on this head is legitimate enough. Like Hohenlohe and Bismarck he felt the humiliation of Germany's weakness in the councils of Europe. Writing in 1863 he complains:

> One thing we still lack—the State. Our people is the only one which has no common legislation, which can send no representatives to the Concert of Europe. No salute greets the German flag in a foreign port. Our Fatherland sails the high seas without colours like a pirate.

Germany, he declared, must become "a power across the sea." This conclusion, coupled with bitter recollections of the part played by England in the affair of the Duchies, no doubt accounted for his growing dislike of England.

> Among the English the love of money has killed every sentiment of honour and every distinction between what is just and unjust. They hide their poltroonery and their materialism behind grand phrases of unctuous theology.

When one sees the English press raising its eyes to heaven, frightened by the audacity of these faithless peoples in arms upon the Continent, one might imagine one heard a venerable parson dropping away. As if the Almighty God, in Whose name Cromwell's Ironsides fought their battles, commanded us Germans to allow our enemy to march undisturbed upon Berlin. Oh, what hypocrisy! Oh, cant, cant, cant!

Europe, he says elsewhere, should have put bounds to the overweening ambition of Britain by bringing to an end the crushing domination of the English Fleet at Gibraltar, at Malta, and at Corfu, and by "restoring the Mediterranean to the Mediterranean peoples." Thus did he sow the seeds of German maritime ambition.

If I were asked to select the most characteristic of Treitschke's works I should be inclined to choose the vehement little pamphlet *Was fordern wir von Frankreich?* in which he insisted on the annexation of Alsace-Lorraine. It is at once the vindication of Prussian policy, and, in the light of the last forty-four years, its condemnation. Like Mommsen, who wrote in much the same strain at the same time, he insisted that the people of the conquered provinces must be "forced to be free," that Morality and History (which for him are much the same thing) proclaim they are German without knowing it.

We Germans, who know Germany and France, know better what is good for Alsace than the unhappy people themselves, who through their French associations have lived in ignorance of the new Germany. We will give them back their own identity against their will. We have in the enormous changes of these times too often seen in glad astonishment the immortal working of the moral forces of History ("das unsterbliche Fortwirkung der sittlichen Mächte der Geschichte") to be able to believe in the unconditional value of a plebiscite on this matter. We invoke the men of the past against the present.

The ruthless pedantry of this is characteristically Prussian. It is easy to appeal to the past against the present, to the dead against the living. Dead men tell no tales. It was, he admitted, true that the Alsatians did not love the Germans. These "misguided people" betrayed "that fatal impulse of Germans" to cleave to other nations than their own. "Well may we Germans be horrified," he adds, "when to-day we see these German people rail in German speech like wild beasts against their own flesh and blood as 'German curs' ('deutschen Hunde') and 'stink-Prussians' ('Stinkpreussen')." Treitschke was too honest to deny it. There was, he ruefully admitted, something rather unlovely about the "civilizing" methods of Prussia. "Prussia has perhaps not always been guided by genial men." But, he argued, Prussia united under the new Empire to the rest of Germany would become humanized and would in turn humanize the new subject-peoples. Well, the forty-four years that have elapsed since Treitschke wrote have refuted him. Instead of a Germanized Prussia, we see a Prussianized Germany. Her "geniality" is the geniality of Zabern. The Poles, the Danes, and the Alsatians are still contumacious. Treitschke appealed to History and History has answered him.

Had he never any misgivings? Yes. After twenty-five years, and within a month of his death, this Hebrew prophet looking round in the year of grace 1895 on the "culture" of modern Germany was filled with apprehension. On the twenty-fifth anniversary of Sedan he delivered an address in the University of Berlin which struck his fond disciples dumb. The Empire, he declared, had disarmed her enemies neither without nor within.

In every direction our manners have deteriorated. The respect which Goethe declared to be the true end of all

moral education disappears in the new generation with a giddy rapidity: respect of God, respect for the limits which nature and society have placed between the two sexes; respect for the Fatherland, which is every day disappearing before the will-of-the-wisp of an indulgent humanity. The more culture extends, the more insipid it becomes; men despise the profundity of the ancient world and consider only that which subserves their immediate end.

The things of the mind, he cried, had lost their hold on the German people. Everyone was eager to get rich and to relieve the monotony of a vain existence by the cult of idle and meretricious pleasures. The signs of the times were everywhere dark and gloomy. The new Emperor (William the Second), he had already hinted, was a dangerous charlatan.

The wheel had come full circle. Fustel de Coulanges was justified of his prophecy. And the handwriting on the walls of Destiny was never more legible than now.

CONCLUSION

THE contemplation of History, so a great master of the art has told us, may not make men wise but it is sure to make them sad. The austere Muse has never had a sadder page to show than that which is even now being added to her record. We see now the full fruition of the German doctrine of the beatitude of War. In sorrow and in anguish, in anguish and in darkness, Belgium is weeping for her children and will not be comforted because they are not. The invader has spared neither age nor sex, neither rank nor function, and every insult that malice could invent, or insolence inspire, has been heaped upon her bowed head. The hearths are cold, the altars desecrated, the fields untilled, the granaries empty. The peasant watches the heavens but he may not sow, he has regarded his fields but he might not reap. The very stones in her cities cry out ; hardly one of them is left upon another. No nation had ever given Europe more blithe and winning pledges of her devotion to the arts of peace. The Flemish school of painters had endowed the world with portraits of a grave tenderness which posterity might always admire but could never imitate. The chisels of her mediæval craftsmen had left us a legacy of buoyant fancy in stone whose characters were alive for us with the animation of the Canterbury Tales. All this the invader has stamped out like the plague. A once busy and thriving community begs its bread in alien lands. Never since the captivity of Babylon has there been so tragic an expatriation. Yet noble in her sorrow and exalted in her anguish, Belgium, like some patient caryatid, still supports the

broken architrave of the violated Treaty. Her little army is still unconquered, her spirit is never crushed. She will arise purified by her sorrow and ennobled by her suffering, and generations yet unborn shall rise up to call her blessed.

THE GERMAN WAR BOOK

INTRODUCTION

THE armies of belligerent States on the outbreak of hostilities, or indeed the moment war is declared, enter into a certain relation with one another which is known by the name of "A State of War." This relationship, which at the beginning only concerns the members of the two armies, is extended, the moment the frontier is crossed, to all inhabitants of the enemy's State, so far as its territory is occupied; indeed it extends itself ultimately to both the movable and immovable property of the State and its citizens.

What is a State of War?

A distinction is drawn between an "active" and a "passive" state of war. By the first is to be understood the relation to one another of the actual fighting organs of the two belligerents, that is to say, of the persons forming the army, besides that of the representative heads of the State and of the leaders. By the second term, *i.e.*, the "passive" state of war, on the other hand, is to be understood the relationship of the hostile army to those inhabitants of the State, who share in the actual conduct of war only in consequence of their natural association with the army of their own State, and who on that account are only to be regarded as enemies in a passive sense. As occupying an intermediate position, one has often to take into account a number of persons who while belonging to the army do not actually participate in the conduct of hostilities

Active Persons and Passive.

but continue in the field to pursue what is to some extent a peaceful occupation, such as Army Chaplains, Doctors, Medical Officers of Health, Hospital Nurses, Voluntary Nurses, and other Officials, Sutlers, Contractors, Newspaper Correspondents, and the like.

That War is no Respecter of Persons.

Now although according to the modern conception of war, it is primarily concerned with the persons belonging to the opposing armies, yet no citizen or inhabitant of a State occupied by a hostile army can altogether escape the burdens, restrictions, sacrifices, and inconveniences which are the natural consequence of a State of War. A war conducted with energy cannot be directed merely against the combatants of the Enemy State and the positions they occupy, but it will and must in like manner seek to destroy the total intellectual[1] and material resources of the latter.[2] Humanitarian claims such as the protection of men and their goods can only be taken into consideration in so far as the nature and object of the war permit.

The Usages of War.

Consequently the "argument of war" permits every belligerent State to have recourse to all means which enable it to attain the object of the war; still, practice has taught the advisability of allowing in one's own interest the introduction of a limitation in the use of certain methods of war and a total renunciation of the use of others. Chivalrous feelings, Christian thought,

[1] [The word used is "geistig," as to the exact meaning of which see translator's footnote to page 55. What the passage amounts to is that the belligerent should seek to break the spirit of the civil population, terrorize them, humiliate them, and reduce them to despair.—J.H.M.]

[2] Moltke, in his well-known correspondence with Professor Bluntschli, is moved to denounce the St. Petersburg Convention which designs as "le seul but légitime" of waging war, "l'affaiblissement des forces militaires," and this he denies most energetically on the ground that, on the contrary, all the resources of the enemy, country, finances, railways, means of subsistence, even the prestige of the enemy's government, ought to be attacked. [This, of course, means the policy of "Terrorismus," *i.e.*, terrorization.—J.H.M.]

higher civilization and, by no means least of all, the recognition of one's own advantage, have led to a voluntary and self-imposed limitation, the necessity of which is to-day tacitly recognized by all States and their armies. They have led in the course of time, in the simple transmission of knightly usage in the passages of arms, to a series of agreements, hallowed by tradition, and we are accustomed to sum these up in the words "usage of war" (Kriegsbrauch), "custom of war" (Kriegssitte), "or fashion of war" (Kriegsmanier). Customs of this kind have always existed, even in the times of antiquity; they differed according to the civilization of the different nations and their public economy, they were not always identical, even in one and the same conflict, and they have in the course of time often changed; they are older than any scientific law of war, they have come down to us unwritten, and moreover they maintain themselves in full vitality; they have therefore won an assured position in standing armies according as these latter have been introduced into the systems of almost every European State.

Of the futility of Written Agreements as Scraps of Paper.

The fact that such limitations of the unrestricted and reckless application of all the available means for the conduct of war, and thereby the humanization of the customary methods of pursuing war, really exist, and are actually observed by the armies of all civilized States, has in the course of the nineteenth century often led to attempts to develop, to extend, and thus to make universally binding these pre-existing usages of war; to elevate them to the level of laws binding nations and armies, in other words to create a *codex belli;* a law of war. All these attempts have hitherto, with some few exceptions to be mentioned later, completely failed. If, therefore, in the following work the expression "the law of war" is

used, it must be understood that by it is meant not a *lex scripta* introduced by international agreements; but only a reciprocity of mutual agreement; a limitation of arbitrary behaviour, which custom and conventionality, human friendliness and a calculating egotism have erected, but for the observance of which there exists no express sanction, but only "the fear of reprisals" decides.

The "flabby emotion" of Humanitarianism.

Consequently the usage of war is even now the only means of regulating the relations of belligerent States to one another. But with the idea of the usages of war will always be bound up the character of something transitory, inconstant, something dependent on factors outside the army. Nowadays it is not only the army which influences the spirit of the customs of war and assures recognition of its unwritten laws. Since the almost universal introduction of conscription, the peoples themselves exercise a profound influence upon this spirit. In the modern usages of war one can no longer regard merely the traditional inheritance of the ancient etiquette of the profession of arms, and the professional outlook accompanying it, but there is also the deposit of the currents of thought which agitate our time. But since the tendency of thought of the last century was dominated essentially by humanitarian considerations which not infrequently degenerated into sentimentality and flabby emotion (*Sentimentalität und weichlicher Gefühlschwärmerei*) there have not been wanting attempts to influence the development of the usages of war in a way which was in fundamental contradiction with the nature of war and its object. Attempts of this kind will also not be wanting in the future, the more so as these agitations have found a kind of moral recognition in some provisions of the Geneva Convention and the Brussels and Hague Conferences.

Cruelty is often "the truest humanity." The perfect Officer.

Moreover the officer is a child of his time. He is subject to the intellectual[1] tendencies which influence his own nation; the more educated he is the more will this be the case. The danger that, in this way, he will arrive at false views about the essential character of war must not be lost sight of. The danger can only be met by a thorough study of war itself. By steeping himself in military history an officer will be able to guard himself against excessive humanitarian notions, it will teach him that certain severities are indispensable to war, nay more, that the only true humanity very often lies in a ruthless application of them. It will also teach him how the rules of belligerent intercourse in war have developed, how in the course of time they have solidified into general usages of war, and finally it will teach him whether the governing usages of war are justified or not, whether they are to be modified or whether they are to be observed. But for a study of military history in this light, knowledge of the fundamental conceptions of modern international and military movements is certainly necessary. To present this is the main purpose of the following work.

[1 "Den geistigen Strömungen." "Intellectual" is the nearest equivalent in English, but it barely conveys the spiritual aureole surrounding the word.—J.H.M.]

PART I

THE USAGES OF WAR IN REGARD TO THE HOSTILE ARMY

CHAPTER I

WHO BELONGS TO THE HOSTILE ARMY?

Who are Combatants and who are not.

SINCE the subjects of enemy States have quite different rights and duties according as they occupy an active or a passive position, the question arises: Who is to be recognized as occupying the active position, or what amounts to the same thing—Who belongs to the hostile army? This is a question of particular importance.

According to the universal usages of war, the following are to be regarded as occupying an active position:

1. The heads of the enemy's state and its ministers, even though they possess no military rank.
2. The regular army, and it is a matter of indifference whether the army is recruited voluntarily or by conscription; whether the army consists of subjects or aliens (mercenaries); whether it is brought together out of elements which were already in the service in time of peace, or out of such as are enrolled at the moment of mobilization (militia, reserve, national guard and Landsturm).
3. Subject to certain assumptions, irregular combatants, also, *i.e.*, such as are not constituent parts of the regular army, but have only taken up arms for the length of the war, or, indeed, for a particular task of the war.

The Irregular.

Only the third class of persons need be more closely considered. In their case the question how far the rights of an active position are to be conceded to them

has at all times been matter of controversy, and the treatment of irregular troops has in consequence varied considerably. Generally speaking the study of military history leads to the conclusion that the Commanding Officers of regular armies were always inclined to regard irregular troops of the enemy with distrust, and to apply to them the contemporary laws of war with peculiar severity. This unfavourable prejudice is based on the ground that the want of a military education and of stern discipline among irregular troops, easily leads to transgressions and to non-observance of the usages of war, and that the minor skirmishes which they prefer to indulge in, and which by their very nature lead to individual enterprise, open the door to irregularity and savagery, and easily deteriorate into robbery and unauthorized violence, so that in every case the general insecurity which it develops engenders bitterness, fury, and revengeful feelings in the harassed troops, and leads to cruel reprisals. Let anyone read the combats of the French troops in the Spanish Peninsula in the years 1808 to 1814, in Tyrol in 1809, in Germany in 1813, and also those of the English in their different Colonial wars, or again the Carlist Wars, the Russo-Turkish War, and the Franco-Prussian War,[1] and one will everywhere find this experience confirmed.

Each State must decide for itself.

If these points of view are on the whole decisive against the employment of irregular troops, yet on the other hand, it must be left to each particular State to determine how far it will disregard such considerations; from the point of view of international law no State is compelled to limit the instruments of its military operations to the standing army. It is, on the contrary, completely justified in drawing upon all the inhabitants capable of bearing arms, entirely according to its discre-

[1] [The General Staff always refers to the war of 1870 as "the German-French War."—J.H.M.]

tion, and in imparting to them an authorization to participate in the war.

The necessity of Authorisation

This public authorization has therefore been until quite recently regarded as the presumed necessary condition of any recognition of combatant rights.

Exceptions which prove the rule.

Of course there are numerous examples in military history in which irregular combatants have been recognized as combatants by the enemy, without any public authorization of the kind; thus in the latest wars of North America, Switzerland, and Italy, and also in the case of the campaign (without any kind of commission from a State) of Garibaldi against Naples and Sicily in the year 1860. But in all these cases the tacitly conceded recognition originated not out of any obligatory principles of international law or of military usage, but simply and solely out of the fear of reprisals. The power to prevent the entrance on the scene of these irregular partisans did not exist, and it was feared that by not recognizing their quality as combatants a cruel character might be given to the war, and consequently that more harm than good might result to the parties themselves. On the other hand there has always been a universal consensus of opinion against recognizing irregulars who make their appearance individually or in small bands, and who conduct war in some measure on their own account (auf eigene Faust) detached from the army, and such opinion approves of the punishment of these offenders with death.

The Free Lance.

This legal attitude which denies every unauthorized rising and identifies it with brigandage was taken up by the revolutionary armies of France towards the insurrection in La Vendée, and again by Napoleon in his proceedings against Schill and Dörnberg in the year 1809, and again by Wellington, Schwarzenberg, and Blücher, in the Proclamations issued by them in France in the year 1814, and the German Army adopted the same

standpoint in the year 1870-71, when it demanded that: "Every prisoner who wishes to be treated as a prisoner of war must produce a certificate as to his character as a French soldier, issued by the legal authorities, and addressed to him personally, to the effect that he has been called to the Colours and is borne on the Roll of a corps organized on a military footing by the French Government."

Modern views.

In the controversies which have arisen since the war of 1870-71 over the different questions of international law and the laws of war, decisive emphasis has no longer been placed upon the question of public authorization, and it has been proposed, on grounds of expediency, to recognize as combatants such irregulars as are indeed without an express and immediate public authorization, but who are organized in military fashion and are under a responsible leader. The view here taken was that by a recognition of these kind of irregular troops the dangers and horrors of war would be diminished, and that a substitute for the legal authorization lacking in the case of individuals offers itself in the military organization and in the existence of a leader responsible to his own State.

Moreover the Brussels Declaration of August 27, 1874, and in consonance with it the *Manual of the Institute of International Law*, desire as the first condition of recognition as combatants "that they have at their head a personality who is responsible for the behaviour of those under him to his own Government." [1]

The German Military View

Considered from the military point of view there is not much objection to the omission of the demand for public authorization, so soon as it becomes a question of organized detachments of troops, but in the case of hostile individuals who appear on the scene we shall none the less be unable to dispense with the certificate

[1] Art. 9 (1).

of membership of an organized band, if such individuals are to be regarded and treated as lawful belligerents.

But the organization of irregulars in military bands and their subjection to a responsible leader are not by themselves sufficient to enable one to grant them the status of belligerents; even more important than these is the necessity of being able to recognize them as such and of their carrying their arms openly. The soldier must know who he has against him as an active opponent, he must be protected against treacherous killing and against any military operation which is prohibited by the usages of war among regular armies. The chivalrous idea which rules in the regular armies of all civilized States always seeks an open profession of one's belligerent character. The demand must, therefore, be insisted on that irregular troops, although not in uniform, shall at least be distinguishable by visible signs which are recognizable at a distance.[1] Only by such means can the occurrence of misuse in the practice of war on the one side, and the tragic consequences of the non-recognition of combatant status on the other, be made impossible. The Brussels Declarations also therefore recommend, in Art. 9 (2 and 3), that they, *i.e.*, the irregular troops, should wear a fixed sign which is visible

[1] The necessity of an adequate mark of distinction was not denied even on the part of the French in the violent controversy which blazed up between the German and French Governments on the subject of the Franctireurs in the war of 1870-1. The dispute was mainly concerned with the question whether the marks worn by the Franctireurs were sufficient or not. This was denied on the German side in many cases with all the greater justification as the usual dress of the Franctireurs, the national blue, was not to be distinguished from the customary national dress, as it was merely a blouse furnished with a red armlet. Besides which, on the approach of German troops, the armlet was often taken off and the weapons were concealed, thereby offending against the principle of open bearing. These kind of offences, as also the lack of a firm organization and the consequent irregularities, were the simple reason why stern treatment of the Franctireurs in the Franco-Prussian War was practised and had necessarily to be practised.

from a distance, and that they should carry their weapons openly. The Hague Convention adds to these three conditions yet a fourth, "That they observe the laws and usages of war in their military operations."

The *Levée en masse*

This condition must also be maintained if it becomes a question of the *levée en masse*, the arming of the whole population of the country, province, or district; in other words the so-called people's war or national war.[1] Starting from the view that one can never deny to the population of a country the natural right of defence of one's fatherland, and that the smaller and consequently less powerful States can only find protection in such *levées en masse*, the majority of authorities on International law have, in their proposals for codification, sought to attain the recognition on principle of the combatant status of all these kinds of people's champions, and in the Brussels declaration and the Hague Regulations the aforesaid condition[2] is omitted. As against this one may nevertheless remark that the condition requiring a military organization and a clearly recognizable mark of being attached to the enemy's troops, is not synonymous with a denial of the natural right of defence of one's country. It is therefore not a question of restraining the population from seizing arms but only of compelling it to do this in an organized manner. Subjection to a responsible leader, a military organization, and clear recognizability cannot be left out of account unless the whole recognized foundation for the admission of irregulars is going to be given up altogether, and a conflict of one private individual

The Hague Regulations will not do.

[1] The effacement of the distinction between fighting forces and peaceful population on the part of the Boers no doubt made many of the severities practised by the English necessary.

[2 *i.e.*, the condition as to having a distinctive mark. So, too, the Hague Regulations dispense with the other condition (of having a responsible leader and an organization) in such a case of a *levée en masse*. See Regulations, Art. II.—J.H.M.]

against another is to be introduced again, with all its attendant horrors, of which, for example, the proceedings in Bazeilles in the last Franco-Prussian War afford an instance. If the necessary organization does not really become established—a case which is by no means likely to occur often—then nothing remains but a conflict of individuals, and those who conduct it cannot claim the rights of an active military status. The disadvantages and severities inherent in such a state of affairs are more insignificant and less inhuman than those which would result from recognition.[1]

A short way with the Defender of his Country.

[1] Professor Dr. C. Lüder, *Das Landkriegsrecht*, Hamburg, 1888. [This is the amiable professor who writes in Holtzendorff's *Handbuch des Völkerrechts* (IV, 378) of "the terrorism so often necessary in war."—J.H.M.]

[The above paragraph, it will be observed, completely throws over Article II of the Hague Regulations extending protection to the defenders of their country.—J.H.M.]

CHAPTER II

THE MEANS OF CONDUCTING WAR

Violence and Cunning.

By the means of conducting war is to be understood all those measures which can be taken by one State against the other in order to attain the object of the war, to compel one's opponent to submit to one's will; they may be summarized in the two ideas of Violence and Cunning, and judgment as to their applicability may be embodied in the following proposition:

> What is permissible includes every means of war without which the object of the war cannot be obtained; what is reprehensible on the other hand includes every act of violence and destruction which is not demanded by the object of war.

It follows from these universally valid principles that wide limits are set to the subjective freedom and arbitrary judgment of the Commanding Officer; the precepts of civilization, freedom and honour, the traditions prevalent in the army, and the general usages of war, will have to guide his decisions.

A.—MEANS OF WAR DEPENDING ON FORCE

The most important instruments of war in the possession of the enemy are his army, and his military positions; to make an end of them is the first object of war. This can happen:

1. By the annihilation, slaughter, or wounding of the individual combatants.
2. By making prisoners of the same.
3. By siege and bombardment.

1. *Annihilation, slaughter, and wounding of the hostile combatants*

How to make an end of the Enemy.

In the matter of making an end of the enemy's forces by violence it is an incontestable and self-evident rule that the right of killing and annihilation in regard to the hostile combatants is inherent in the war power and its organs, that all means which modern inventions afford, including the fullest, most dangerous, and most massive means of destruction, may be utilized; these last, just because they attain the object of war as quickly as possible, are on that account to be regarded as indispensable and, when closely considered, the most human.

The Rules of the Game.

As a supplement to this rule, the usages of war recognize the desirability of not employing severer forms of violence if and when the object of the war may be attained by milder means, and furthermore that certain means of war which lead to unnecessary suffering are to be excluded. To such belong:

The use of poison both individually and collectively (such as poisoning of streams and food supplies[1]) the propagation of infectious diseases.

Assassination, proscription, and outlawry of an opponent.[2]

The use of arms which cause useless suffering, such as soft-nosed bullets, glass, etc.

The killing of wounded or prisoners who are no longer capable of offering resistance.[3]

[1] Notoriously resorted to very often in the war of the Spanish against Napoleon.

[2] Napoleon was, in the year 1815, declared an outlaw by the Allies. Such a proceeding is not permissible by the International Law of to-day since it involves an indirect invitation to assassination. Also the offer of a reward for the capture of a hostile prince or commander as occurred in August, 1813, on the part of the Crown Prince of Sweden in regard to Napoleon, is no longer in harmony with the views of to-day and the usages of war. [But to hire a third person to assassinate one's opponent is claimed by the German General Staff (see II, b, below) as quite legitimate.—J.H.M.]

[3] As against this there have been many such offences committed in the wars of recent times, principally on the Turkish side in the Russo-Turkish War.

The refusal of quarter to soldiers who have laid down their arms and allowed themselves to be captured.

The progress of modern invention has made superfluous the express prohibition of certain old-fashioned but formerly legitimate instruments of war (chain shot, red-hot shot, pitch balls, etc.), since others, more effective, have been substituted for these ; on the other hand the use of projectiles of less than 400 grammes in weight is prohibited by the St. Petersburg Convention of December 11th, 1868. (This only in the case of musketry.[1])

He who offends against any of these prohibitions is to be held responsible therefor by the State. If he is captured he is subject to the penalties of military law.

Coloured Troops are "Blacklegs."

Closely connected with the unlawful instruments of war is the employment of uncivilized and barbarous peoples in European wars. Looked at from the point of view of law it can, of course, not be forbidden to any State to call up armed forces from its extra-European colonies, but the practice stands in express contradiction to the modern movement for humanizing the conduct of war and for alleviating its attendant sufferings, if men and troops are employed in war, who are without the knowledge of civilized warfare and by whom, therefore, the very cruelties and inhumanities forbidden by the usages of war are committed. The employment of these kinds of troops is therefore to be compared with the use of the instruments of war already described as forbidden. The transference of African and Mohammedan Turcos to a European seat of war in the year 1870 was, therefore, undoubtedly to be regarded as a retrogression from civilized to barbarous

[1] This prohibition was often sinned against by the French in the war of 1870-71. Cp. Bismarck's despatches of Jan. 9th and Feb. 7th, 1871 ; also Bluntschli in *Holtzendorff's Jahrbuch*, I, p. 279, where a similar reproach brought against the Baden troops is refuted.

warfare, since these troops had and could have no conception of European-Christian culture, of respect for property and for the honour of women, etc.[1]

2. *Capture of Enemy Combatants*

If individual members or parties of the army fall into the power of the enemy's forces, either through their being disarmed and defenceless, or through their being obliged to cease from hostilities in consequence of a formal capitulation, they are then in the position of "prisoners of war," and thereby in some measure exchange an active for a passive position. Prisoners of War.

According to the older doctrine of international law all persons belonging to the hostile State, whether combatants or non-combatants, who happen to fall into the hands of their opponent, are in the position of prisoners of war. He could deal with them according to his pleasure, ill-treat them, kill them, lead them away into bondage, or sell them into slavery. History knows but few exceptions to this rule, these being the result of particular treaties. In the Middle Ages the Church tried to intervene as mediator in order to ameliorate the lot of the prisoners, but without success. Only the prospect of ransom, and chivalrous ideas in the case of individuals, availed to give any greater protection. It is to be borne in mind that the prisoners belonged to Vae Victis!

[1] If we have principally in view the employment of uncivilized and barbarous troops on a European seat of war, that is simply because the war of 1870 lies nearest to us in point of time and of space. On a level with it is the employment of Russo-Asiatic nationalities in the wars of emancipation, of Indians in the North-American War, of the Circassians in the Polish Rising, of the Bashi-bazouks in the Russo-Turkish War, etc. As regards the Turcos, a Belgian writer Rolin-Jacquémyns said of them in regard to the war of 1859, "les allures et la conduite des Turcos avaient soulevé d'universels dégoûts." On the other side it is not to be forgotten that a section of the French Press in 1870 praised them precisely because of their bestialities and incited them to such things, thus in the *Indépendance algérienne*: "Arrière la pitié! arrière les sentiments d'humanité! Mort, pillage et incendie!"

him who had captured them, a conception which began to disappear after the Thirty Years War. The treatment of prisoners of war was mostly harsh and inhuman; still, in the seventeenth century, it was usual to secure their lot by a treaty on the outbreak of a war.

The credit of having opened the way to another conception of war captivity belongs to Frederick the Great and Franklin, inasmuch as they inserted in the famous Treaty of friendship, concluded in 1785 between Prussia and North America, entirely new regulations as to the treatment of prisoners of war.

The Modern View.

The complete change in the conception of war introduced in recent times has in consequence changed all earlier ideas as to the position and treatment of prisoners of war. Starting from the principle that only States and not private persons are in the position of enemies in time of war, and that an enemy who is disarmed and taken prisoner is no longer an object of attack, the doctrine of war captivity is entirely altered and the position of prisoners has become assimilated to that of the wounded and the sick.

Prisoners of War are to be honourably treated.

The present position of international law and the law of war on the subject of prisoners of war is based on the fundamental conception that they are the captives not of private individuals, that is to say of Commanders, Soldiers, or Detachments of Troops, but that they are the captives of the State. But the State regards them as persons who have simply done their duty and obeyed the commands of their superiors, and in consequence views their captivity not as penal but merely as precautionary.

It therefore follows that the object of war captivity is simply to prevent the captives from taking any further part in the war, and that the State can, in fact, do everything which appears necessary for securing the captives, but nothing beyond that. The captives have

therefore to submit to all those restrictions and inconveniences which the purpose of securing them necessitates; they can collectively be involved in a common suffering if some individuals among them have provoked sterner treatment; but, on the other hand, they are protected against unjustifiable severities, ill-treatment, and unworthy handling; they do, indeed, lose their freedom, but not their rights; war captivity is, in other words, no longer an act of grace on the part of the victor but a right of the defenceless.

Who may be made Prisoners.

According to the notions of the laws of war to-day the following persons are to be treated as prisoners of war:

1. The Sovereign, together with those members of his family who were capable of bearing arms, the chief of the enemy's State, generally speaking, and the Ministers who conduct its policy even though they are not among the individuals belonging to the active army.[1]
2. All persons belonging to the armed forces.
3. All Diplomatists and Civil Servants attached to the army.
4. All civilians staying with the army, with the approval of its Commanders, such as transport, sutlers, contractors, newspaper correspondents, and the like.
5. All persons actively concerned with the war such as Higher Officials, Diplomatists, Couriers, and the like, as also all those persons whose freedom can be a danger to the army of the other State, for example, Journalists of hostile opinions, prominent and influential leaders of Parties, Clergy who excite the people, and such like.[2]
6. The mass of the population of a province or a district if they rise in defence of their country.

[1] Recent examples: the capture of the King of Saxony by the Allies after the Battle of Leipzig, and also of Napoleon, that of the Elector of Hesse, 1866, Napoleon III, 1870, Abd-el-Kader, 1847, and Schamyl, 1859.

[2] In this light must be judged the measures taken in 1866 by General Vogel von Falckenstein against certain Hanoverian citizens although these measures have often been represented in another light.

The points of view regarding the treatment of prisoners of war may be summarized in the following rules:

Prisoners of war are subject to the laws of the State which has captured them.

The treatment of Prisoners of War.

The relation of the prisoners of war to their own former superiors ceases during their captivity; a captured officer's servant steps into the position of a private servant. Captured officers are never the superiors of soldiers of the State which has captured them; on the contrary, they are under the orders of such of the latter as are entrusted with their custody.

The prisoners of war have, in the places in which they are quartered, to submit to such restrictions of their liberty as are necessary for their safe keeping. They have strictly to comply with the obligation imposed upon them, not to move beyond a certain indicated boundary.

Their confinement.

These measures for their safe keeping are not to be exceeded; in particular, penal confinement, fetters, and unnecessary restrictions of freedom are only to be resorted to if particular reasons exist to justify or necessitate them.

The concentration camps in which prisoners of war are quartered must be as healthy, clean, and decent as possible; they should not be prisons or convict establishments.

It is true that the French captives were transported by the Russians to Siberia as malefactors in the years 1812 and 1813. This was a measure which was not illegal according to the older practice of war, but it is no longer in accordance with the legal conscience of to-day. Similarly the methods which were adopted during the Civil War in North America in a prison in the Southern States, against prisoners of war of the Union Forces, whereby the men were kept without air and

nourishment and thus badly treated, were also against the practice of the law of war.

Freedom of movement within these concentration camps or within the whole locality may be permitted if there are no special reasons against it. But obviously prisoners of war are subject to the existing, or to the appointed rules of the establishment or garrison.

The Prisoner and his Task master.

Prisoners of war can be put to moderate work proportionate to their position in life; work is a safeguard against excesses. Also on grounds of health this is desirable. But these tasks should not be prejudicial to health nor in any way dishonourable or such as contribute directly or indirectly to the military operations against the Fatherland of the captives. Work for the State is, according to The Hague Regulations, to be paid at the rates payable to members of the army of the State itself.

Should the work be done on account of other public authorities or of private persons, then the conditions will be fixed by agreement with the military authorities. The wages of the prisoners of war must be expended in the improvement of their condition, and anything that remains should be paid over to them after deducting the cost of their maintenance when they are set free. Voluntary work in order to earn extra wages is to be allowed, if there are no particular reasons against it.[1] Insurrection, insubordination, misuse of the freedom granted, will of course justify severer confinement in each case, also punishment, and so will crimes and misdemeanours.

Flight.

Attempts at escape on the part of individuals who have not pledged their word of honour might be regarded

[1] Thus the French prisoners in 1870-1 were very thankful to find employment in great numbers as harvest workers, or in the counting houses of merchants or in the factories of operatives or wherever an opportunity occurred, and were thereby enabled to earn extra wages.

as the expression of a natural impulse for liberty, and not as a crime. They are therefore to be punished by restriction of the privileges granted and a sharper supervision but not with death. But the latter punishment will follow of course in the case of plots to escape, if only because of the danger of them. In case of a breach of a man's parole the punishment of death may reasonably be incurred. In some circumstances, if necessity and the behaviour of the prisoners compel it, one is justified in taking measures the effect of which is to involve the innocent with the guilty.[1]

Diet. The food of the prisoners must be sufficient and suitable to their rank, yet they will have to be content with the customary food of the country; luxuries which the prisoners wish to get at their own expense are to be permitted if reasons of discipline do not forbid.

Letters. Correspondence with one's home is to be permitted, likewise visits and intercourse, but these of course must be watched.

Personal belongings. The prisoners of war remain in possession of their private property with the exception of arms, horses, and documents of a military purport. If for definite reasons any objects are taken away from them, then these must be kept in suitable places and restored to them at the end of their captivity.

The Information Bureau Article 14 of The Hague Regulations prescribes that on the outbreak of hostilities there shall be established in each of the belligerent States and in a given case in neutral States, which have received into their territory any of the combatants, an information bureau for

[1] Thus General von Falckenstein in 1870, in order to check the prevalent escaping of French officers, commanded that for every escape ten officers whose names were to be determined by drawing lots should be sent off, with the loss of all privileges of rank, to close confinement in a Prussian fortress, a measure which was, indeed, often condemned but against which nothing can be said on the score of the law of nations.

prisoners of war. Its duty will be to answer all inquiries concerning such prisoners and to receive the necessary particulars from the services concerned in order to be able to keep a personal entry for every prisoner. The information bureau must always be kept well posted about everything which concerns a prisoner of war. Also this information bureau must collect and assign to the legitimate persons all personal objects valuables, letters, and the like, which are found on the field of battle or have been left behind by dead prisoners of war in hospitals or field-hospitals. The information bureau enjoys freedom from postage, as do generally all postal dispatches sent to or by prisoners of war. Charitable gifts for prisoners of war must be free of customs duty and also of freight charges on the public railways.

The prisoners of war have, in the event of their being wounded or sick, a claim to medical assistance and care as understood by the Geneva Convention and, so far as is possible, to spiritual ministrations also.

These rules may be shortly summarised as follows :

Prisoners of war are subject to the laws of the country in which they find themselves, particularly the rules in force in the army of the local State ; they are to be treated like one's own soldiers, neither worse nor better.

When Prisoners may be put to Death.

The following considerations hold good as regard the imposition of a death penalty in the case of prisoners ; they can be put to death :

1. In case they commit offences or are guilty of practices which are punishable by death by civil or military laws.
2. In case of insubordination, attempts at escape, etc., deadly weapons can be employed.
3. In case of overwhelming necessity, as reprisals, either against similar measures, or against other irregularities on the part of the management of the enemy's army.

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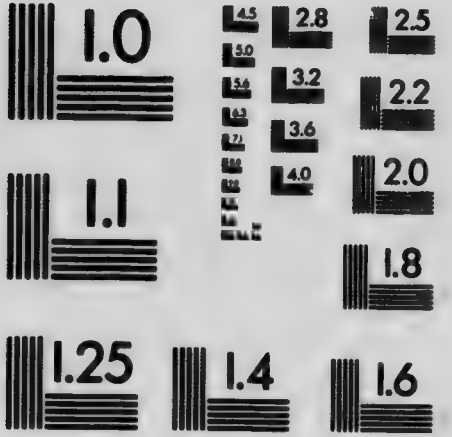

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4. In case of overwhelming necessity, when other means of precaution do not exist and the existence of the prisoners becomes a danger to one's own existence.

"Reprisals."

As regards the admissibility of reprisals, it is to be remarked that these are objected to by numerous teachers of international law on grounds of humanity. To make this a matter of principle, and apply it to every case exhibits, however, "a misconception due to intelligible but exaggerated and unjustifiable feelings of humanity, of the significance, the seriousness and the right of war. It must not be overlooked that here also the necessity of war, and the safety of the State are the first consideration, and not regard for the unconditional freedom of prisoners from molestation."[1]

One must not be too scrupulous.

That prisoners should only be killed in the event of extreme necessity, and that only the duty of self-preservation and the security of one's own State can justify a proceeding of this kind is to-day universally admitted. But that these considerations have not always been decisive is proved by the shooting of 2,000 Arabs at Jaffa in 1799 by Napoleon; of the prisoners in the rising of La Vendée; in the Carlist War; in Mexico, and in the American War of Secession, where it was generally a case of deliverance from burdensome supervision and the difficulties of maintenance; whereas peoples of a higher morality such as the Boers in our own days, finding themselves in a similar position, have preferred to let their prisoners go. For the rest, calamities such as might lead to the shooting of prisoners are scarcely likely to happen under the excellent conditions of transport in our own time and the correspondingly small difficulty of feeding them—in a European campaign.[2]

[1] [Professor] Lüder, *Das Landkriegsrecht*, p. 73.

[2] What completely false notions about the right of killing prisoners of war are prevalent even among educated circles in France is shown by the widely-circulated novel *Les Braves Gens*, by Margueritte, in which, on page 360 of the chapter "Mon Premier," is told the story,

The captivity of war comes to an end : The end of Captivity

1. By force of circumstances which *de facto* determine it, for example, successful escape, cessation of the war, or death.
2. By becoming the subject of the enemy's state.
3. By release, whether conditional or unconditional, unilateral or reciprocal.
4. By exchange.

As to 1. With the cessation of the war every reason for the captivity ceases, provided there exist no special grounds for another view. It is on that account that care should be taken to discharge prisoners immediately. There remain only prisoners sentenced to punishment or awaiting trial, *i.e.*, until the expiation of their sentence or the end of their trial as the case may be.

As to 2. This pre-supposes the readiness of the State to accept the prisoner as a subject.

As to 3. A man released under certain conditions has to fulfil them without question. If he does not do this, and again falls into the hands of his enemy, then he must expect to be dealt with by military law, and indeed according to circumstances with the punishment of death. A conditional release cannot be imposed on the captive ; still less is there any obligation upon the state to discharge a prisoner on conditions—for example, on his parole. The release depends entirely on the discretion of the State, as does also the determination of its limits and the persons to whom it shall apply. Parole.

based apparently on an actual occurrence, of the shooting of a captured Prussian soldier, and it is excused simply because the information given by him as to the movements of his own people turned out to be untrue. The cowardly murder of a defenceless man is regarded by the author as a stern duty, due to war, and is thus declared to be in accordance with the usages of war. [The indignation of the German General Staff is somewhat overdone, as a little further on (see the chapter on treatment of inhabitants of occupied territory) in the War-Book they advocate the ruthless shooting or hanging of an inhabitant who, being *forced* to guide an enemy army against his own, leads them astray.—J.H.M.]

The release of whole detachments on their parole is not usual. It is rather to be regarded as an arrangement with each particular individual.

Arrangements of this kind, every one of which is as a rule made a conditional discharge, must be very precisely formulated and the wording of them most carefully scrutinized. In particular it must be precisely expressed whether the person released is only bound no longer to fight directly with arms against the State which releases him, in the present war, whether he is justified in rendering services to his own country in other positions or in the colonies, etc., or whether all and every kind of service is forbidden him.

The question whether the parole given by an officer or a soldier is recognized as binding or not by his own State depends on whether the legislation or even the military instructions permit or forbid the giving of one's parole.[1] In the first case his own State must not command him to do services the performance of which he has pledged himself not to undertake.[2] But personally the man released on parole is under all circumstances bound to observe it. He destroys his honour if he breaks his word, and is liable to punishment if recaptured, even though he has been hindered by his own State from keeping it.[3] According to The Hague Regulations a Government can demand no services which are in conflict with a man's parole.

[1] In Austria the giving of one's parole whether by troops or officers is forbidden.

[2] Monod, *Allemands et Français, Souvenirs de Campagne*, p. 39: "I saw again at Tours some faces which I had met before Sedan; among them were, alas! officers who had sworn not to take up arms again, and who were preparing to violate their parole, encouraged by a Government in whom the sense of honour was as blunted as the sense of truth."

[3] In the year 1870, 145 French officers, including three Generals, one Colonel, two Lieutenant-Colonels, three Commandants, thirty Captains (Bismarck's Despatch of December 14th, 1870), were guilty of breaking their parole. The excuses, afterwards put forward, were

Exchange of Prisoners.

As to 4. The exchange of prisoners in a single case can take place between two belligerents without its being necessary in every case to make circumstantial agreements. As regards the scope of the exchange and the forms in which it is to be completed the Commanding Officers on both sides alone decide. Usually the exchange is man for man, in which case the different categories of military persons are taken into account and certain ratios established as to what constitutes equivalents.

Removal of Prisoners.

Transport of Prisoners.—Since no Army makes prisoners in order to let them escape again afterwards, measures must be taken for their transport in order to prevent attempts at escape. If one recalls that in the year 1870-71, no fewer than 11,160 officers and 333,885 men were brought from France to Germany, and as a result many thousands often had to be guarded by a proportionately small company, one must admit that in such a position only the most zealous energy and ruthless employment of all the means at one's disposal can avail, and although it is opposed to military sentiment to use weapons against the defenceless, none the less in such a case one has no other choice. The captive who seeks to free himself by flight does so at his peril and can complain of no violence which the custody of prisoners directs in order to prevent behaviour of that kind. Apart from these apparently harsh measures against attempt at escape, the transport authorities must do everything they can to alleviate the lot of the sick and wounded prisoners, in particular they are to protect them against insults and ill-treatment from an excited mob.

generally quite unsound, though perhaps there may have been an element of doubt in some of the cases so positively condemned on the German side. The proceedings of the French Government who allowed these persons without scruple to take service again were subsequently energetically denounced by the National Assembly.

3. *Sieges and Bombardments*

Fair Game.

War is waged not merely with the hostile combatants but also with the inanimate military resources of the enemy. This includes not only the fortresses but also every town and every village which is an obstacle to military progress. All can be besieged and bombarded, stormed and destroyed, if they are defended by the enemy, and in some cases even if they are only occupied. There has always been a divergence of views, among Professors of International Law, as to the means which are permissible for waging war against these inanimate objects, and these views have frequently been in strong conflict with those of soldiers; it is therefore necessary to go into this question more closely.

We have to distinguish:

(*a*) Fortresses, strong places, and fortified places.
(*b*) Open towns, villages, buildings, and the like, which, however, are occupied or used for military purposes.

Fortresses and strong places are important centres of defence, not merely in a military sense, but also in a political and economic sense. They furnish a principal resource to the enemy and can therefore he bombarded just like the hostile army itself.

Of making the most of one's opportunity.

A preliminary notification of bombardment is just as little to be required as in the case of a sudden assault. The claims to the contrary put forward by some jurists are completely inconsistent with war and must be repudiated by soldiers; the cases in which a notification has been voluntarily given do not prove its necessity. The besieger will have to consider for himself the question whether the very absence of notification may not be itself a factor of success, by means of surprise, and indeed whether notification will not mean a loss of precious time. If there is no danger of this then humanity no doubt demands such a notification.

Since town and fortifications belong together and form an inseparable unity, and can seldom in a military sense, and never in an economic and political sense, be separated, the bombardment will not limit itself to the actual fortification, but it will and must extend over the whole town; the reason for this lies in the fact that a restriction of the bombardment to the fortifications is impracticable; it would jeopardize the success of the operation, and would quite unjustifiably protect the defenders who are not necessarily quartered in the works.

Spare the Churches.

But this does not preclude the exemption by the besieger of certain sections and buildings of the fortress or town from bombardment, such as churches, schools, libraries, museums, and the like, so far as this is possible.

But of course it is assumed that buildings seeking this protection will be distinguishable and that they are not put to defensive uses. Should this happen, then every humanitarian consideration must give way. The utterances of French writers about the bombardments of Strassburg Cathedral in the year 1870, are therefore quite without justification, since it only happened after an observatory for officers of artillery had been erected on the tower.

The only exemption from bombardment recognized by international law, through the medium of the Geneva Convention, concerns hospitals and convalescent establishments. Their extension is left to the discretion of the besieger.

A Bombardment is no Respecter of Persons.

As regards the civil population of a fortified place the rule is: All the inhabitants, whether natives or foreigners, whether permanent or temporary residents, are to be treated alike.

No exception need be made in regard to the diplomatists of neutral States who happen to be in the town;

if before or during the investment by the besieger their attention is drawn to the fate to which they expose themselves by remaining, and if days of grace in which to leave are afforded them, that simply rests on the courtesy of the besieger. No such duty is incumbent upon him in international law. Also permission to send out couriers with diplomatic despatches depends entirely upon the discretion of the besieger. In any case it will always depend on whether the necessary security against misuse is provided.[1]

A timely severity.

If the commandant of a fortress wishes to strengthen its defensive capacity by expelling a portion of the population such as women, children, old people, wounded, etc., then he must take these steps in good time, *i.e.*, before the investment begins. If the investment is completed, no claim to the free passage of these classes can be made good. All juristic demands to the contrary are as a matter of principle to be repudiated, as being in fundamental conflict with the principles of war. The very presence of such persons may accelerate the surrender of the place in certain circumstances, and it would therefore be foolish of a besieger to renounce voluntarily this advantage.[2]

[1] To a petition of the diplomatists shut up in Paris to be allowed to send a courier at least once a week, Bismarck answered in a document of September 27th, 1870, as follows: "The authorization of exchange of correspondence in the case of a fortress is not generally one of the usages of war; and although we would authorize willingly the forwarding of open letters from diplomatic agents, in so far as their contents be not inconvenient from a military point of view, I cannot recognize as well founded the opinion of those who should consider the interior of the fortifications of Paris as a suitable centre for diplomatic relations."

[2] "In the year 1870 the greatest mildness was practised on the German side towards the French fortresses. At the beginning of the siege of Strassburg it was announced to the French Commander that free passage was granted to the women, the children, and the sick, a favour which General Uhrich rejected, and the offer of which he very wisely did not make known to the population. And when later three delegates of the Swiss Federal Council sought permission in

Once the surrender of a fortress is accomplished, then, by the usages of war to-day, any further destruction, annihilation, incendiarism, and the like, are completely excluded. The only further injuries that are permitted are those demanded or necessitated by the object of the war, *e.g.*, destruction of fortifications, removal of particular buildings, or in some circumstances of complete quarters, rectification of the foreground and so on.

"Undefended Places."

A prohibition by international law of the bombardment of open towns and villages which are not occupied by the enemy, or defended, was, indeed, put into words by The Hague Regulations, but appears superfluous, since modern military history knows of hardly any such case.

But the matter is different where open towns are occupied by the enemy or are defended. In this case, naturally all the rules stated above as to fortified places hold good, and the simple rules of tactics dictate that fire should be directed not merely against the bounds of the place, so that the space behind the enemy's firing line and any reserves that may be there shall not escape. A bombardment is indeed justified, and unconditionally dictated by military consideration, if the occupation of the village is not with a view to its defence but only for

accordance with the resolution of [illegible]ence at Olten, of September 7th, to carry food to the [illegible]ation in Strassburg and to conduct non-combatants out o[illegible] over the frontier, both requests were willingly granted by [illegible]esieger and four thousand inhabitants left the fortress as a result of this permission. Lastly, the besiegers of Belfort granted to the women, children, aged, and sick, free passage to Switzerland, not indeed immediately at the moment chosen by the commander Denfert, but indeed soon after" (*Dahn*, I, p. 89). Two days after the bombardment of Bitsch had begun (September 11th) the townsfolk begged for free passage out of the town. This was, indeed, officially refused; but, none the less, by the indulgence of the besieger, it was effected by a great number of townspeople. Something like one-half of the 2,700 souls of the civil population, including the richest and most respectable, left the town (*Irle, die Festung Bitsch. Beiträge zur Länder und Völkerkunde von Elsass-Lothringen*).

the passage of troops, or to screen an approach or retreat, or to prepare or cover a tactical movement, or to take up supplies, etc. The only criterion is the value which the place possesses for the enemy in the existing situation.

Regarding it from this point of view, the bombardment of Kehl by the French in 1870 was justified by military necessity, although the place bombarded was an open town and not directly defended. "Kehl offered the attacking force the opportunity of establishing itself in its buildings, and of bringing up and placing there its personnel and material, unseen by the defenders. It became a question of making Kehl inaccessible to the enemy and of depriving it of the characteristics which made its possession advantageous to the enemy. The aforesaid justification was not very evident."[1]

Also the bombardment of the open town of Saarbrücken cannot from the military point of view be the subject of reproach against the French. On August 2nd a Company of the Fusilier Regiment No. 40 had actually occupied the railway station and several others had taken up a position in the town. It was against these troops that the fire of the French was primarily directed. If havoc was spread in the town, that could scarcely be avoided. In the night of August 3rd to 4th, the fire of the French batteries was again directed on the railway station in order to prevent the despatch of troops and material. Against this proceeding also no objection can be made, since the movement of trains had actually taken place.

If, therefore, on the German side[2] energetic protest were made in both cases, and the bombardment of Kehl and Saarbrücken were declared a violation of international law, this only proves that in 1870 a proper com-

[1] Hartmann, *Krit. Versuche*, II, p. 83.
[2] *Staatsanzeiger*, August 26th, 1870.

prehension of questions of the laws of war of this kind was not always to be found even in the highest military and official circles. But still less was this the case on the French side as is clear from the protests against the German bombardment of Dijon, Chateaudun, Bazeilles, and other places, the military justification for which is still clearer and incontestable.[1]

B.—METHODS NOT INVOLVING THE USE OF FORCE, CUNNING, AND DECEIT

Stratagems.

Cunning in war has been permissible from the earliest times, and was esteemed all the more as it furthered the object of war without entailing the loss of men. Surprises, laying of ambushes, feigned attacks and retreats, feigned flight, pretence of inactivity, spreading of false news as to one's strength and dispositions, use of the enemy's parole—all this was permitted and prevalent ever since war begun, and so it is to-day.[2]

[1] Considering the many unintelligible things written on the French side about this, the opinion of an objective critic is doubly valuable. Monod, p. 55, *op. cit.*, says: "I have seen Bazeilles burning; I have informed myself with the greatest care as to how things happened. I have questioned French soldiers, Bavarian soldiers, and Bavarian inhabitants present at this terrible drama; I am able to see in it only one of the frightful, but inevitable, consequences of the war." As to the treatment of Chateaudun, stigmatized generally on the French side as barbarous, the author writes (p. 56): "The inhabitants of Chateaudun, regularly organized as part of the National Guard, aided by the franctireurs of Paris, do not defend themselves by preparing ambushes but by fighting as soldiers. Chateaudun is bombarded; nothing could be more legitimate, since the inhabitants made a fortress of it; but once they got the upper hand the Bavarians set fire to more than one hundred houses." The picture of outrages by Germans which follows may be countered by what the author writes in another place about the French soldiers: "The frightful scenes at the taking of Paris by our troops at the end of May, 1871, may enable us to understand what violences soldiers allow themselves to be drawn into, when both excited and exhausted by the conflict."

[2] "One makes use in war of the skin of the lion or the fox indifferently. Cunning often succeeds where force would fail it is therefore absolutely necessary to make use of both; sometimes force

The apophthegm of Frederick the Great.

What are "dirty tricks"?

As to the limits between recognized stratagems and those forms of cunning which are reprehensible, contemporary opinion, national culture, the practical needs of the moment, and the changing military situation, are so influential that it is prima facie proportionately difficult to draw any recognized limit, as difficult as between criminal selfishness and taking a justifiable advantage. Some forms of artifice are, however, under all circumstances irreconcilable with honourable fighting, especially all those which take the form of faithlessness, fraud, and breach of one's word. Among these are breach of a safe-conduct; of a free retirement; or of an armistice, in order to gain by a surprise attack an advantage over the enemy; feigned surrender in order to kill the enemy who then approach unsuspiciously; misuse of a flag of truce, or of the Red Cross, in order to secure one's approach, or in case of attack, deliberate violation of a solemnly concluded obligation, *e.g.*, of a war treaty; incitement to crime, such as murder of the enemy's leaders, incendiarism, robbery, and the like. This kind of outrage was an offence against the law of nations even in the earliest times. The natural conscience of mankind whose spirit is chivalrously alive in the armies of all civilized States, has branded it as an outrage upon human right, and enemies who in such a public manner violate the laws of honour and justice have been regarded as no longer on an equality.[1]

can be countered by force, while on the other hand force has often to yield to cunning."—Frederick the Great, in his *General Principles of War*, Art. xi.

[1] Also the pretence of false facts, as, for example, practised by Murat on November 13th, 1805, against Prince Auersperg, in order to get possession of the passage of the Danube at Florisdorf, the like stratagem which a few days later Bagration practised against Murat at Schöngraben; the deceptions under cover of their word of honour practised by the French Generals against the Prussian leaders in 1806 at Prenzlau; these are stratagems which an officer in the field would scarcely dare to employ to-day without being branded by the public opinion of Europe.

Of False Uniforms.

The views of military authorities about methods of this kind, as also of those which are on the border-line, frequently differ from the views held by notable jurists. So also the putting on of enemy's uniforms, the employment of enemy or neutral flags and marks, with the object of deception are as a rule declared permissible by the theory of the laws of war,[1] while military writers[2] have expressed themselves unanimously against them. The Hague Conference has adopted the latter view in forbidding the employment of enemy's uniforms and military marks equally with the misuse of flags of truce and of the Red Cross.[3]

The Corruption of others may be useful.

Bribery of the enemy's subjects with the object of obtaining military advantages, acceptance of offers of treachery, reception of deserters, utilization of the discontented elements in the population, support of pretenders and the like, are permissible, indeed international law is in no way opposed[4] to the exploitation of the

[1] In the most recent times a change of opinion seems to have taken place. Bluntschli in his time holds (sec. 565) the use of the distinguishing marks of the enemy's army—uniforms, standards, and flags—with the object of deception, to be a doubtful practice, and thinks that this kind of deception should not extend beyond the preparations for battle. "In battle the opponents should engage one another openly, and should not fall on an enemy from behind in the mask of a friend and brother in arms." The Manual of the Institute of International Law goes further. It says in 8 (*c* and *d*): "Il est interdit d'attaquer l'ennemi en dissimulant les signes distinctifs de la force armée; d'user indûment du pavillon national, des insignes militaires ou de l'uniforme de l'ennemi." The Declaration of Brussels altered the original proposition, "L'emploi du pavillon national ou des insignes militaires et de l'uniforme de l'ennemi est interdit," into "L'abus du pavillon national."

[2] Cp. Boguslawski, *Der kleine Krieg*, 1881, p. 26, 27.

[3] [The Hague Regulations, Art. 23, to which Germany was a party, declares it is prohibited: "To make improper use of a flag of truce, the national flag, or military ensigns and the enemy's uniform, as well as the distinctive badges of the Geneva Convention." —J.H.M.]

[4] [This represents the German War-Book in its most disagreeable light, and is casuistry of the worst kind. There are certain things on

And murder is one of the Fine Arts.

crimes of third parties (assassination, incendiarism, robbery, and the like) to the prejudice of the enemy.

The ugly is often expedient, and that it is a mistake to be too "nice-minded."

Considerations of chivalry, generosity, and honour may denounce in such cases a hasty and unsparing exploitation of such advantages as indecent and dishonourable, but law which is less touchy allows it.[1] "The ugly and inherently immoral aspect of such methods cannot affect the recognition of their lawfulness. The necessary aim of war gives the belligerent the right and imposes upon him, according to circumstances, the duty not to let slip the important, it may be the decisive, advantages to be gained by such means."[2]

which International Law is silent because it will not admit the possibility of their existence. As Professor Holland well puts it (*The Laws of War on Land*, p. 61), in reference to the subject of reprisals the Hague Conference "declined to seem to add to the authority of a practice so repulsive" by legislating on the subject. And so with assassination. It can never be presumed from The Hague or other international agreements that what is not expressly forbidden is thereby approved.]

[1] [Professor] Bluntschli, *Völkerrecht*, p. 316.

[2] [Professor] Lüder, *Handbuch des Völkerrechts*, p. 90.

CHAPTER III

TREATMENT OF WOUNDED AND SICK SOLDIERS

THE generally accepted principle that in war one should do more harm to one's enemy than the object of the war unconditionally requires, has led to treating the wounded and sick combatants as being no longer enemies, but merely sick men who are to be taken care of and as much as possible protected from the tragic results of wounds and illness. Although endeavours to protect the wounded soldiers from arbitrary slaughter, mutilation, ill-treatment, or other brutalities go back to the oldest times, yet the credit of systematizing these endeavours belongs to the nineteenth century, and this system was raised to the level of a principle of international law by the Geneva Convention of 1864.

The sanctity of the Geneva Convention.

With the elevation of the Geneva Agreements to the level of laws binding peoples and armies, the question of the treatment of wounded and sick combatants, as well as that of the persons devoted to the healing and care of them, is separated from the usages of war. Moreover, any discussion of the form of this international law must be regarded from the military point of view as aimless and unprofitable. The soldier may still be convinced that some of the Articles are capable of improvement, that others need supplementing, and that yet others should be suppressed, but he has not the right to deviate from the stipulations ; it is his duty to contribute as far as he can to the observance of the whole code.

The "Hyenas of the Battlefield."

No notice is taken in the Geneva Convention of the question of the protection of fallen or wounded combatants from the front, from the rabble usually known as "The Hyenas of the battlefield," who are accustomed to rob, ill-treat, or slay soldiers lying defenceless on the field of battle. This is a matter left to the initiative of the troops. Persons of this kind, whether they be soldiers or not, are undoubtedly to be dealt with in the sternest possible manner.

CHAPTER IV

INTERCOURSE BETWEEN BELLIGERENT ARMIES

HOSTILE armies are in frequent intercourse with one another. This takes place so long as it is practised openly, that is to say, with the permission of the commanders on both sides, by means of bearers of flags of truce. In this class are included those who have to conduct the official intercourse between the belligerent armies or divisions thereof, and who appear as authorized envoys of one army to the other, in order to conduct negotiations and to transmit communications. As to the treatment of bearers of flags of truce there exist regular usages of war, an intimate acquaintance with which is of the highest practical importance. This knowledge is not merely indispensable for the higher officers, but also for all inferior officers, and to a certain extent for the private in the ranks. Flags of Truce.

Since a certain degree of intercourse between the two belligerents is unavoidable, and indeed desirable, the assurance of this intercourse is in the interests of both parties; it has held good as a custom from the earliest times, and even among uncivilized people, whereby these envoys and their assistants (trumpeter, drummer, interpreter, and orderly) are to be regarded as inviolable; a custom which proceeds on the presumption that these persons, although drawn from the ranks of the combatants, are no longer, during the performance of these duties, to be regarded as active belligerents. They must, therefore, neither be shot nor captured; on the

contrary, everything must be done to assure the performance of their task and to permit their return on its conclusion.

But it is a fundamental condition of this procedure

1. That the envoy be quite distinguishable as such by means of universally recognized and well-known marks; distinguishable both by sight and by hearing (flags of truce, white flags, or, if need be, white pocket-handkerchiefs) and signals (horns or bugles).
2. That the envoy behave peaceably, and
3. That he does not abuse his position in order to commit any unlawful act.

Of course any contravention of the last two conditions puts an end to his inviolability; it may justify his immediate capture, and, in extreme cases (espionage, hatching of plots), his condemnation by military law. Should the envoy abuse his mission for purposes of observation, whereby the army he is visiting is imperilled, then also he may be detained, but not longer than is necessary. In all cases of this kind it is recommended that prompt and detailed information be furnished to the head of the other army.

It is the right of every army:

1. To accept or to refuse such envoys. An envoy who is not received must immediately rejoin his own army; he must not, of course, be shot at on his way.
2. To declare that it will not during a fixed period entertain any envoys. Should any appear in spite of this declaration; they cannot claim to be inviolable.
3. To determine in what forms and under what precautions envoys shall be received. The envoys have to submit to any commands even though entailing personal inconvenience such as blindfolding or going out of their way on coming or returning, and such like.

The observance of certain forms in the reception of envoys is of the greatest importance, as a parley may serve as a cloak for obtaining information or for the temporary interruption of hostilities and the like. Such a danger is particularly likely to occur if the combatants have been facing one another, as in the case of a war of positions, for a long time without any particular result. These forms are also important because their non-observance, as experience shows, gives rise to recrimination and charges of violation of the usages of war. The following may, therefore, be put forward as the chief rules for the behaviour of an envoy and as the forms to be observed in his reception. The Etiquette of Flags of Truce.

1. The envoy (who is usually selected as being a man skilled in languages and the rules, and is mounted on horseback) makes for the enemy's outpost or their nearest detachment, furnished with the necessary authorization, in the company of a trumpeter and a flag-bearer on horseback. If the distance between the two outposts of the respective lines is very small, then the envoy may go on foot in the company of a bugler or a drummer. The Envoy

2. When he is near enough to the enemy's outposts or their lines to be seen and heard, he has the trumpet or bugle blown and the white flag unfurled by the bearer. The bearer will seek to attract the attention of the enemy's outposts or detachments whom he has approached, by waving the flag to and fro. His approach.

   From this moment the envoy and his company are inviolable, in virtue of a general usage of war. The appearance of a flag of truce in the middle of a fight, however, binds no one to cease fire. Only the envoy and his companions are not to be shot at.

3. The envoy now advances with his escort at a slow walk to the nearest posted officer. He must obey the challenge of the enemy's outposts and patrol. The challenge—"Wer da?"

His reception.

4. Since it is not befitting to receive an envoy at just that place which he prefers, he has to be ready to be referred to a particular place of admission. He must keep close to the way prescribed for him. It is advisable for the enemy whenever this is possible to give the envoy an escort on the way.

He dismounts.

5. On arriving at the place indicated, the envoy dismounts along with his attendants; leaves them at a moderate distance behind him, and proceeds on foot to the officer on duty, or highest in command, at that place, in order to make his wishes known.

Let his Yea be Yea, and his Nay, Nay

6. Intercourse with the enemy's officer must be courteously conducted. The envoy has always to bear in mind the discharge of his mission, to study the greatest circumspection in his conversations, neither to attempt to sound the enemy or to allow himself to be sounded. . . . The best thing is to refuse to enter into any conversation on military matters beforehand.

The duty of his Interlocutor.

7. For less important affairs the officer at the place of admission will possess the necessary instructions, in order either to discharge them himself, or to promise their discharge in a fixed period. But in most cases the decision of a superior will have to be taken; in this case the envoy has to wait until the latter arrives.

8. If the envoy has a commission to deal personally with the Commander-in-Chief or a high officer, or if the officer on duty at the place of admission considers it desirable for any reason to send the envoy back, then, if it be necessary, the eyes of the envoy may be blindfolded; to take away his weapons is hardly necessary. If the officer at the place of admission is in any doubt what attitude to adopt towards the requests of the envoy, he will for the time being detain him at his post, and send an intimation to his immediate superior in case the affair appears to him of particular importance, and at the same time to the particular officer to whom the envoy is or should be sent.

9. If an envoy will not wait, he may be permitted, according to circumstances, to return to his own army if the observation made by him or any communications received can no longer do any harm. The impatient Envoy

From the foregoing it follows that intercourse with the envoys of an enemy presupposes detailed instructions and a certain intelligence on the part of the officers and men if it is to proceed peaceably. But before all things it must be made clear to the men that the intentional wounding or killing of an envoy is a serious violation of international law, and that even an unfortunate accident which leads to such a violation may have the most disagreeable consequences.

A despatch of Bismarck's of January 9th, 1871, demonstrates by express mention of their names, that twenty-one German envoys were shot by French soldiers while engaged on their mission. Ignorance and defective teaching of the troops may have been the principal reason for this none too excusable behaviour. In many cases transgressions on the part of the rawer elements of the army may have occurred, as has been many times offered as an excuse in higher quarters. Nevertheless, this state of affairs makes clear the necessity of detailed instruction and a sharp supervision of the troops by the officers. The French again.

CHAPTER V

SCOUTS AND SPIES

The Scout.

SCOUTING resolves itself into a question of getting possession of important information about the position, strength, plans, etc., of the enemy, and thereby promoting the success of one's own side. The existence of scouting has been closely bound up with warfare from the earliest times; it is to be regarded as an indispensable means of warfare and consequently is undoubtedly permissible. If the scouting takes place publicly by recognizable combatants then it is a perfectly regular form of activity, against which the enemy can only use the regular means of defence, that is to say, killing in battle, and capture. If the scouting takes the form of secret or surreptitious methods, then it is espionage, and is liable to particularly severe and ruthless measures by way of precaution and exemplary punishment—usually death by shooting or hanging. This severe punishment is not inflicted on account of dishonourable disposition on the part of the spy—there need exist nothing of the kind, and the motive for the espionage may arise from the highest patriotism and sentiment of military duty quite as often as from avarice and dishonourable cupidity[1]—but principally on account of

The Spy and his short shrift.

[1] To judge espionage with discrimination according to motives does not seem to be feasible in war. "Whether it be a patriot who devotes himself, or a wretch who sells himself, the danger they run at the hands of the enemy will be the same. One will respect the first and despise the second, but one will shoot both."—*Quelle* I, 126. This principle is very ancient. As early as 1780 a North-American court-martial condemned Major André, an Englishman, to death by hanging, and in vain did the English Generals intercede for him, in vain did he plead himself, that he be shot as a soldier.

the particular danger which lies in such secret methods. It is as it were a question of self-defence.

Having regard to this severe punishment introduced by the usages of war, it is necessary to define the conception of espionage and of spies as precisely as possible.

What is a Spy?

A spy was defined by the German army staff in 1870 as one "who seeks to discover by clandestine methods, in order to favour the enemy, the position of troops, camps, etc.; on the other hand enemies who are soldiers are only to be regarded as spies if they have violated the rules of military usages, by denial or concealment of their military character."

The Brussels Declaration of 1874 defines the conception as follows: "By a spy is to be understood he who clandestinely or by illicit pretences enters or attempts to enter into places in the possession of the enemy with the intention of obtaining information to be brought to the knowledge of the other side." The Hague Conference puts it in the same way.

Of the essentials of Espionage.

The emphasis in both declarations is to be laid on the idea of "secrecy" or "deception." If regular combatants make enquiries in this fashion, for example in disguise, then they also come under the category of spies, and can lawfully be treated as such. Whether the espionage was successful or not makes no difference. The motive which has prompted the spy to accept his commission, whether noble or ignoble, is, as we have already said, indifferent; likewise, whether he has acted on his own impulse or under a commission from his own State or army. The military jurisdiction in this matter cuts across the territorial principle and that of allegiance, in that it makes no difference whether the spy is the subject of the belligerent country or of another State.

It is desirable that the heavy penalty which the spy incurs should be the subject not of mere suspicion but of

actual proof of existence of the offence, by means of a trial, however summary (if the swift course of the war permits), and therefore the death penalty will not be enforced without being preceded by a judgment.

Accessories are Principals.

Participation in espionage, favouring it, harbouring a spy, are equally punishable with espionage itself.

CHAPTER VI

DESERTERS AND RENEGADES

THE difference between these two is this—the first class are untrue to the colours, their intention being to withdraw altogether from the conflict, to leave the seat of war, and, it may be, to escape into a country outside it; but the second class go over to the enemy in order to fight in his ranks against their former comrades. According to the general usages of war, deserters and renegades, if they are caught, are to be subjected to martial law and may be punished with death.

The Deserter is faithless and the Renegade false.

Although some exponents of the laws of war claim that deserters and renegades should be handed back to one's opponent, and on the other hand exactly the opposite is insisted on by others, namely, the obligation to accept them—all we can say is that a soldier cannot admit any such obligation.

Deserters and renegades weaken the power of the enemy, and therefore to hand them over is not in the interest of the opposite party, and as for the right to accept them or reject them, that is a matter for one's own decision.

But both may be useful.

CHAPTER VII

CIVILIANS IN THE TRAIN OF AN ARMY

"Followers." In the train of an army it is usual to find, temporarily or permanently, a mass of civilians who are indispensable to the satisfaction of the wants of officers and soldiers or to the connection of the army with the native population. To this category belong all kinds of contractors, carriers of charitable gifts, artists, and the like, and, above all, newspaper correspondents whether native or foreign. If they fall into the hands of the enemy, they have the right, should their detention appear desirable, to be treated as prisoners of war, assuming that they are in possession of an adequate authorization.

For all these individuals, therefore, the possession of a pass issued by the military authorities concerned, in accordance with the forms required by international intercourse, is an indispensable necessity, in order that in the case of a brush with the enemy, or of their being taken captive, they may be recognized as occupying a passive position and may not be treated as spies.[1]

In the grant of these authorizations the utmost circumspection should be shown by the military authori-

[1] The want of an adequate authorization led in 1874 to the shooting of the Prussian newspaper correspondent Captain Schmidt by the Carlists, which raised a great outcry. Schmidt was armed with a revolver, with maps of the seat of war, and also with plans and sketches of the Carlists' positions, as against which he had only an ordinary German passport as a Prussian Captain and was seized within the Carlists' outpost, and since he could not defend himself, verbally, on account of his ignorance of the Spanish language, he was convicted as a spy by court-martial and shot.

ties; this privilege should only be extended to those whose position, character, and intentions are fully known, or for whom trustworthy persons will act as sureties.

The War Correspondent: his importance, his presence is desirable.

This circumspection must be observed most scrupulously in the case of newspaper correspondents whether native or foreign. Since the component parts of a modern army are drawn from all grades of the population, the intervention of the Press for the purpose of intellectual intercourse between the army and the population at home can no longer be dispensed with. The army also derives great advantages from this intellectual intercourse; it has had to thank the stimulus of the Press in recent campaigns for an unbroken chain of benefits, quite apart from the fact that news of the war in the newspapers is a necessity for every soldier. The importance of this intervention, and on the other hand the dangers and disadvantages which may arise from its misuse, make it obviously necessary that the military authorities should control the whole of the Press when in the field. In what follows we shall briefly indicate the chief rules which are customary, in the modern usages of war, as regards giving permission to newspaper correspondents.

The ideal War Correspondent.

The first thing necessary in a war correspondent is a sense of honour; in other words, he must be trustworthy. Only a man who is known to be absolutely trustworthy, or who can produce a most precise official certificate or references from unimpeachable persons, can be granted permission to attach himself to headquarters.

An honourable correspondent will be anxious to adhere closely to the duties he owes to his paper on the one hand, and the demands of the army whose hospitality he enjoys on the other. To do both is not always easy, and in many cases tact and refinement on the part of the

correspondent can alone indicate the right course; a censorship is proved by experience to be of little use; the certificates and recommendations required must therefore be explicit as to the possession of these qualities by the applicant; and according as he possesses them or not his personal position at headquarters and the degree of support extended to him in the discharge of his duties will be decided.

It is therefore undoubtedly in the interest of the army as of the Press, that the latter shall only despatch such representatives as really are equal to the high demands which the profession of correspondent requires.

The Etiquette of the War Correspondents

The correspondent admitted on the strength of satisfactory pledges has therefore to promise on his word of honour to abide by the following obligations:

1. To spread no news as to the disposition, numbers, or movements of troops, and, moreover, the intentions and plans of the staff, unless he has permission to publish them. (This concerns principally correspondents of foreign newspapers since one's own newspapers are already subject to a prohibition of this kind by the Imperial Press Law of April 7th, 1874.)
2. To report himself on arrival at the headquarters of a division immediately to the commanding officer, and to ask his permission to stay, and to remove himself immediately and without making difficulties if the o.c. deems his presence inexpedient on military grounds.
3. To carry with him always, and to produce on demand, his authorization (certificate, armlet, photograph) and his pass for horses, transport, and servants.
4. To take care that his correspondence and articles are submitted at headquarters.
5. To carry out all instructions of the officers at headquarters who supervise the press.

Contraventions of the orders from headquarters, indiscretions, and tactlessness, are punished in less serious cases with a caution, in grave cases by expulsion; where the behaviour of the correspondent or his correspondence has not amounted to a military offence, and is therefore not punishable by martial law.

A journalist who has been expelled not only loses his privileges but also his passive character; and if he disregards his exclusion he will be held responsible.

Foreign journalists are subject to the same obligations; they must expressly recognize their authority and in case of punishment cannot claim any personal immunity.[1]

Journalists who accompany the army without the permission of the staff, and whose reports therefore cannot be subject to military control, are to be proceeded against with inexorable severity. They are to be expelled ruthlessly as dangerous, since they only get in the way of the troops and devour their subsistence, and may under the mask of friendship do harm to the army.

[1] In the Egyptian Campaign in 1882 the English War Office published the following regulations for newspaper correspondents. [The translator does not think it necessary to reproduce these.]

CHAPTER VIII

THE EXTERNAL MARK OF INVIOLABILITY

How to tell a Non-Combatant.

THOSE persons and objects who in war are to be treated as inviolable must be recognizable by some external mark. Such is the so-called Geneva Cross (a red cross on a white ground) introduced by international agreement.[1]

Attention is to be attracted in the case of persons by armlets; in the case of buildings by flags; in the case of waggons and other objects by a corresponding paint mark.

If the mark is to receive adequate respect it is essential:

1. That it should be clearly visible and recognizable.
2. That it should only be worn by such persons or attached to such objects as can lawfully claim it.

As to 1. Banners and flags must be sufficiently large to be both distinguishable and recognizable at a far distance; they are to be so attached that they will not be masked by any national flag that may be near them, otherwise unintentional violations will be unavoidable.

As to 2. Abuse will result in the protective mark being no longer respected, and a further result would be to render illusory, and to endanger, the whole of the Geneva Convention. Measures must therefore be

[1] In Turkey, in place of the Red Cross a red crescent was introduced, and was correspondingly respected by the Russians in the campaign of 1877. Japan, on the contrary, has waived its original objection to the cross.

taken to prevent such abuses and to require every member of the army to draw attention to anyone who wears these marks without being entitled to do so.[1]

Regulations of international law to prevent and punish misuse of the Red Cross do not exist.[2]

[1] That in the war of 1870 the Red Cross was frequently abused on the French side is well known, and has been the subject of documentary proof. The escape of Bourbaki from Metz, under cover of the misuse of the Geneva Convention, proves that even in the highest circles people were not clear as to the binding obligation of International Regulations, and disregarded them in the most frivolous manner.

[2] [But the English legislature has, by the Geneva Convention Act, 1911 (1 and 2 Geo. V, c. 20) made it a statutory offence, punishable on summary conviction by a fine not exceeding £10, to use the heraldic emblem of the Red Cross or the words "Red Cross" for any purpose whatsoever, if the person so using it has not the authority of the Army Council for doing so.—J.H.M.]

CHAPTER IX

WAR TREATIES

That Faith must be kept even with an Enemy.

IN the following pages we have only to do with war treaties in the narrower sense, that is such as are concluded during the war itself and have as their object either the regulation of certain relations during the period of the war, or only an isolated and temporary measure. It is a principle of all such treaties that: Etiam hosti fides servanda. Every agreement is to be strictly observed by both sides in the spirit and in the letter. Should this rule not be observed by one side then the other has the right to regard the treaty as denounced.

How a treaty is to be concluded depends on the discretion of those who conclude it. Drafts or models of treaties do not exist.

A.—*Treaties of Exchange*

Exchange of Prisoners.

These have for their object the mutual discharge or exchange of prisoners of war. Whether the opponent will agree to an offer of this kind or not, depends entirely upon himself.

The usual stipulation is: An equal number on both sides. That is only another way of saying that a surplus of prisoners on the one side need not be handed over.

The restitution of a greater number of common soldiers against officers can be stipulated; in that case, the relative value of different grades must be precisely fixed in the treaty.

B.—*Treaties of Capitulation*

Capitulations—they cannot be too meticulous.

The object of these is the surrender of fortresses or strong places as also of troops in the open field. Here again there can be no talk of a generally accepted model. The usages of war have, however, displayed some rules for capitulations, the observance of which is to be recommended :

1. Before any capitulation is concluded, the authority of the Commander who concludes it should be formally and unequivocally authenticated. How necessary a precaution of this kind is, is shown by the capitulations of Rapp at Danzig, and of Gouvion St. Cyr at Dresden, in 1813, which were actually annulled by the refusal of the General Staff of the Allies to ratify them. At the trial of Bazaine the indictment by General Rivière denied the title of the Marshal to conclude a capitulation.

2. If one of the parties to the treaty makes it a condition that the confirmation of the monarch, or the Commander-in-Chief, or even the national assembly is to be obtained, then this circumstance must be made quite clear. Also care is to be taken that in the event of ratification being refused every advantage that might arise from an ambiguous proceeding on the part of one opponent, be made impossible.

3. The chief effect of a capitulation is to prevent that portion of the enemy's force which capitulates from taking any part in the conflict during the rest of the war, or it may be for a fixed period. The fate of the capitulating troops or of the surrendered fortress differs in different cases.[1] In

[1] How different the conditions of capitulation may be the following examples will show :

Sedan : (1) The French army surrender as prisoners of war. (2) In consideration of the brave defence all Generals, Officers, and Officials occupying the rank of Officers, will receive their freedom so soon as they give their word of honour in writing not to take up arms again until the end of the war, and not to behave in a manner pre-

the Treaty of Capitulation every condition agreed upon both as to time and manner must be expressed in precise and unequivocable words. Conditions which violate the military honour of those capitulated are not permissible according to modern views. Also, if the capitulation is an unconditional one or, to use the old formula, is "at

judicial to the interests of Germany. The officers and officials who accept these conditions are to keep their arms and their own personal effects. (3) All arms and all war material consisting of flags, eagles, cannons, munitions, etc., are to be surrendered and to be handed over by a French military commission to German commissioners. (4) The fortress of Sedan is to be immediately placed at the disposition (of the Germans) exactly as it stands. (5) The officers who have refused the obligation not to take up arms again, as well as the troops, shall be disarmed and organized according to their regiments or corps to go over in military fashion. The medical staff are without exception to remain behind to look after the wounded.

Metz: The capitulation of Metz allowed the disarmed soldiers to keep their knapsacks, effects, and camp equipment, and allowed the officers who preferred to go into captivity, rather than give their word of honour, to take with them their swords, or sabres, and their personal property.

Belfort: The garrison were to receive all the honours of war, to keep their arms, their transport, and their war material. Only the fortress material was to be surrendered.

Bitsch (concluded after the settlement of peace): (1) The garrison retires with all the honours of war, arms, banners, artillery, and field pieces. (2) As to siege material and munitions of war a double inventory is to be prepared. (3) In the same way an inventory is to be taken of administrative material. (4) The material referred to in Articles 2 and 3 is to be handed over to the Commandant of the German forces. (5) The archives of the fortress, with the exception of the Commandant's own register, are left behind. (6) The customs officers are to be disarmed and discharged to their own homes. (7) The canteen-keepers who wish to depart in the ordinary way receive from the local commandant a pass viséd by the German local authorities. (8) The local Commandant remains after the departure of the troops at the disposal of the German higher authorities till the final settlement; he binds himself on his word of honour not to leave the fortress. (9) The troops are transported with their horses and baggage by the railroad. (10) The baggage left behind in Bitsch by the officers of the 1st and 5th Corps will be sent later to an appointed place in France, two non-commissioned officers remain to guard it and later to send it back under their supervision.

Nisch (January 10th, 1878): [The translator has not thought it necessary to reproduce this.]

discretion," the victor does not thereby, according to the modern laws of war, acquire a right of life and death over the persons capitulating.

4. Obligations which are contrary to the laws of nations, such as, for example, to fight against one's own Fatherland during the continuation of the war, cannot be imposed upon the troops capitulating. Likewise, also, obligations such as are forbidden them by their own civil or military laws or terms of service, cannot be imposed.
5. Since capitulations are treaties of war they cannot contain, for those contracting them, either rights or duties which extend beyond the period of the war, nor can they include dispositions as to matters of constitutional law such as, for example, a cession of territory.
6. A violation of any of the obligations of the treaty of capitulation justifies an opponent in immediately renewing hostilities without further ceremony.

Of the White Flag.

The external indication of a desire to capitulate is the raising of a white flag. There exists no obligation to cease firing immediately on the appearance of this sign (or to cease hostilities). The attainment of a particular important, possibly decisive, point, the utilization of a favourable moment, the suspicion of an illicit purpose in raising the white flag, the saving of time, and the like, may induce the commanding officer to disregard the sign until these reasons have disappeared.

If, however, no such considerations exist, then humanity imposes an immediate cessation of hostilities.

c.—*Safe-conducts*

Of Safe-Conducts.

The object of these is to secure persons or things from hostile treatment. The usages of war in this matter furnish the following rules :

1. Letters of safe-conduct, for persons, can only be given to such persons as are certain to behave peaceably

and not to misuse them for hostile purposes; letters of safe-conduct for things are only to be granted under a guarantee of their not being employed for warlike purposes.

2. The safe-conducts granted to persons are personal to them, *i.e.*, they are not available for others. They do not extend to their companions unless they are expressly mentioned.

An exception is only to be made in the case of diplomatists of neutral States, in whose case their usual entourage is assumed to be included even though the members are not specifically named.

3. The safe-conduct is revocable at any time; it can even be altogether withdrawn or not recognized by another superior, if the military situation has so altered that its use is attended with unfavourable consequences for the party which has granted it.

4. A safe-conduct for things on the other hand is not confined to the person of the bearer. It is obvious that if the person of the bearer appears at all suspicious, the safe-conduct can be withdrawn. This can also happen in the case of an officer who does not belong to the authority which granted it. The officer concerned is in this case fully responsible for his proceedings, and should report accordingly.

D.—*Treaties of Armistice*

Of Armistices

By armistice is understood a temporary cessation of hostilities by agreement. It rests upon the voluntary agreement of both parties. The object is either the satisfaction of a temporary need such as carrying away the dead, collecting the wounded, and the like, or the preparation of a surrender or of negotiations for peace.

A general armistice must accordingly be distinguished from a local or particular one. The general armistice extends to the whole seat of war, to the whole army, and to allies; it is therefore a formal cessation of the

war. A particular armistice on the contrary relates only to a part of the seat of war, to a single part of the opposing army. Thus the armistice of Poischwitz in the autumn of 1813 was a general armistice; that of January 28th, 1871, between Germany and France, was a particular or local one, since the South-Eastern part of the theatre of war was not involved.

The right to conclude an armistice, whether general or particular, belongs only to a person in high command, *i.e.*, the Commander-in-Chief. Time to go and obtain the consent of the ruling powers may be wanting. However, if the object of the armistice is to begin negotiations for peace, it is obvious that this can only be determined by the highest authorities of the State.

If an agreement is concluded, then both sides must observe its provisions strictly in the letter and the spirit. A breach of the obligations entered into on the one side can only lead to the immediate renewal of hostilities on the other side.[1] A notification is in this case only necessary if the circumstances admit of the consequent loss of time. If the breach of the armistice is the fault of individuals, then the party to whom they belong is not immediately responsible and cannot be regarded as having broken faith. If, therefore, the behaviour of these individuals is not favoured or approved by their superiors, there is no ground for a resumption of hostilities. But the guilty persons ought, in such case, to be punished by the party concerned.

Even though the other party does not approve the behaviour of the trespassers but is powerless to prevent

[1] Thus, in August, 1813, the numerous trespasses across the frontier on the part of French detachments and patrols led to the entry of the Silesian army into the neutral territory and therewith to a premature commencement of hostilities. Later inquiries show that these trespasses were committed without the orders of a superior and that, therefore, the French staff cannot be reproached with a breach of the compact; but the behaviour of Blücher was justified in the circumstances and in any case was based upon good faith.

such trespasses, then the opponent is justified in regarding the armistice as at an end. In order to prevent unintentional violation both parties should notify the armistice as quickly as possible to all, or at any rate to the divisions concerned. Delay in the announcement of the armistice through negligence or bad faith lies, of course, at the door of him whose duty it was to announce it. A violation due to the bad faith of an individual is to be sternly punished.

No one can be compelled to give credit to a communication from the enemy to the effect that an armistice has been concluded; the teaching of military history is full of warnings against lightly crediting such communications.[1]

[1] We have here in mind not exclusively intentionally untrue communications, although these also, especially in the Napoleonic war, very frequently occur, very often the untrue communication is made in good faith.

During the fight which took place at Chaffois on January 29th, 1871, when the village was stormed, the cry of Armistice was raised on the French side. A French officer of the General Staff communicated to the Commander of the 14th Division by the presentation of a written declaration the news of an armistice concluded at Versailles for the whole of France. The document presented, which was directed by the Commander-in-Chief of the French Army in the East, General Clinchant, to the Commander of the French Division engaged at Chaffois, ran as follows:

"An armistice of twenty-one days has been signed on the 27th. I have this evening received the official news. Cease fire in consequence and inform the enemy, according to the forms followed in war, that the armistice exists and that you are charged to bring it to his knowledge.

(*Signed*) CLINCHANT."

Pontarlier, January, 29th, 1871.

Of the conclusion of this armistice no one on the German side had any knowledge. None the less hostilities ceased for the time being, pending the decision of the higher authorities. Since on the enemy's side it was asserted that a portion of the French troops in Chaffois had been made prisoners after the news of the existence of the armistice was communicated, and the order to cease fire had been given, some thousand French prisoners were set free again in recognition of this possibility, and the arms which had been originally kept back from them were later restored to them again. When the proceedings at

A fixed form for the conclusion of an armistice is not prescribed. A definite and clear declaration is sufficient. It is usual and is advisable to have treaties of this kind in writing in order to exclude all complication, and, in the case of differences of opinion later on, to have a firm foundation to go upon.

During the armistice nothing must occur which could be construed as a continuation of hostilities, the *status quo* must rather be observed as far as possible, provided that the wording of the treaty does not particularize anything to the contrary. On the other hand the belligerents are permitted to do everything which betters or strengthens their position after the expiry of the armistice and the continuation of hostilities. Thus, for example, troops may unhesitatingly be exercised, fresh ones recruited, arms and munitions manufactured, and food supplies brought up, troops shifted and reinforcements brought on the scene. Whether destroyed or damaged fortifications may also be restored is a question to which different answers are given by influential teachers of the law of nations. It is best settled by express agreement in concrete cases, and so with the revictualling of a besieged fortress.

As regards its duration, an armistice can be concluded either for a determined or an undetermined period, and with or without a time for giving notice. If no fixed period is agreed upon, then hostilities can be recommenced at any time. This, however, is to be made known to the enemy punctually, so that the resumption does not represent a surprise. If a fixed time is agreed on,

Chaffois were reported, General von Manteuffel decided on the 30th January as follows:

"The news of an armistice for the Army of the South is false; the operations are to be continued, and the gentlemen in command are on no other condition to negotiate with the enemy than that of laying down their arms. All other negotiations are, without any cessation of hostilities, to be referred to the Commander-in-Chief."

then hostilities can be recommenced the very moment it expires, and without any previous notification. The commencement of an armistice is, in the absence of an express agreement fixing another time, to date from the moment of its conclusion; the armistice expires at dawn of the day to which it extends. Thus an armistice made to last until January 1st comes to an end on the last hour of December 31st, and a shorter armistice with the conclusion of the number of hours agreed upon; thus, for example, an armistice concluded on May 1st at 6 p.m. for 48 hours lasts until May 3rd at 6 p.m.

PART II

USAGES OF WAR IN REGARD TO ENEMY TERRITORY AND ITS INHABITANTS

CHAPTER I

RIGHTS AND DUTIES OF THE INHABITANTS

The Civil Population is not to be regarded as an enemy.

It has already been shown in the introduction that war concerns not merely the active elements, but that also the passive elements are involved in the common suffering, *i.e.*, the inhabitants of the occupied territory who do not belong to the army. Opinions as to the relations between these peaceable inhabitants of the occupied territory and the army in hostile possession have fundamentally altered in the course of the last century. Whereas in earlier times the devastation of the enemy's territory, the destruction of property, and, in some cases indeed, the carrying away of the inhabitants into bondage or captivity, were regarded as a quite natural consequence of the state of war, and whereas in later times milder treatment of the inhabitants took place although destruction and annihilation as a military resource still continued to be entertained, and the right of plundering the private property of the inhabitants remained completely unlimited—to-day, the universally prevalent idea is that the inhabitants of the enemy's territory are no longer to be regarded, generally speaking, as enemies. It will be admitted, as a matter of law, that the population is, in the exceptional circumstances of war, subjected to the limitations,

burdens, and measures of compulsion conditioned by it, and owes obedience for the time being to the power *de facto*, but may continue to exist otherwise undisturbed and protected as in time of peace by the course of law.

They must not be molested.

It follows from all this, as a matter of right, that, as regards the personal position of the inhabitants of the occupied territory, neither in life or in limb, in honour or in freedom, are they to be injured, and that every unlawful killing; every bodily injury, due to fraud or negligence; every insult; every disturbance of domestic peace; every attack on family, honour, and morality and, generally, every unlawful and outrageous attack or act of violence, are just as strictly punishable as though they had been committed against the inhabitants of one's own land. There follows, also, as a right of the inhabitants of the enemy territory, that the invading army can only limit their personal independence in so far as the necessity of war unconditionally demands it, and that any infliction that needlessly goes beyond this is to be avoided.

Their duty.

As against this right, there is naturally a corresponding duty on the part of the inhabitants to conduct themselves in a really peaceable manner, in no wise to participate in the conflict, to abstain from every injury to the troops of the power in occupation, and not to refuse obedience to the enemy's government. If this presumption is not fulfilled, then there can no longer be any talk of violations of the immunities of the inhabitants, rather they are treated and punished strictly according to martial law.

Of the humanity of the Germans and the barbarity of the French.

The conception here put forward as to the relation between the army and the inhabitants of an enemy's territory, corresponds to that of the German Staff in the years 1870-71. It was given expression in numerous proclamations, and in still more numerous orders of the day, of the German Generals. In contrast to this the

behaviour of the French authorities more than once betrays a complete ignorance of the elementary rules of the law of nations, alike in their diplomatic accusations against the Germans and in the words used towards their own subjects. Thus, on the outbreak of the war, a threat was addressed to the Grand Duchy of Baden, not only by the French Press but also officially (von amtlicher Stelle),[1] "that even its women would not be protected." So also horses of Prussian officers, who had been shot by the peasants, were publicly put up to auction by the murderers. So also the Franctireurs threatened the inhabitants of villages occupied by the Germans that they would be shot and their houses burnt down if they received the enemy in their houses or "were to enter into intercourse with them." So also the prefect of the Côte d'Or, in an official circular of November 21st, urges the sub-prefects and mayors of his Department to a systematic pursuit of assassination, when he says: "The Fatherland does not demand of you that you should assemble *en masse* and openly oppose the enemy, it only expects that three or four determined men should leave the village every morning and conceal themselves in a place indicated by nature, from which, without danger, they can shoot the Prussians; above all, they are to shoot at the enemy's mounted men whose horses they are to deliver up at the principal place of the Arrondissement. I will award a bonus to them (for the delivery of such horses), and will publish their heroic deed in all the newspapers of the Department, as well as in the *Moniteur*." But this conception of the relation between the inhabitants and the hostile army not only possessed the minds of the provincial authorities but also the central government, at Tours itself, as is clear from the fact that it held it necessary

[1] It will be observed that no authority is given for this statement. —J.H.M.]

to stigmatize publicly the members of the municipal commission at Soissons who, after an attempt on the life of a Prussian sentry by an unknown hand, prudently warned their members against a repetition of such outrages, when it [the central government] ordered "that the names of the men who had lent themselves to the assistance and interpretation of the enemy's police be immediately forthcoming."[1] And if, on the French side, the proclamation of General von Falckenstein is cited as a proof of similar views on the German side—the proclamation wherein the dwellers on the coast of the North Sea and the Baltic are urged to participate in the defence of the coast, and are told: "Let every Frenchman who sets foot on your coast be forfeit"—as against this all that need be said is that this incitement, as is well known, had no effect in Germany and excited the greatest surprise and was properly condemned.

What the Invader may do.

Having thus developed the principles governing the relation between the hostile army and the inhabitants, we will now consider somewhat more closely the duties of the latter and the burdens which, in a given case, it is allowable to impose upon it. Obviously a precise enumeration of every kind of service which may be demanded from them is impossible, but the following of the most frequent occurrence are:

1. Restriction of post, railway and letter communication, supervision, or, indeed, total prohibition of the same.
2. Limitation of freedom of movement within the country, prohibition to frequent certain parts of the seat of war, or specified places.
3. Surrender of arms.

[1] See as to this: *Rolin-Jacquemyns*, II, 34; and Dahn, *Der Deutsch-Französische Krieg und das Völkerrecht.*

4. Obligation to billet the enemy's soldiers; prohibition of illumination of windows at night and the like.
5. Production of conveyances.
6. Performance of work on streets, bridges, trenches (*Gräben*), railways, buildings, etc.
7. Production of hostages.

As to 1, the necessity of interrupting, in many cases, railway, postal, and telegraph communication, of stopping them or, at the least, stringently supervising them, hardly calls for further proof. Human feeling on the part of the commanding officer will know what limits to fix, where the needs of the war and the necessities of the population permit of mutual accommodation.

As to 2, if according to modern views no inhabitant of occupied territory can be compelled to participate directly in the fight against his own Fatherland, so, conversely, he can be prevented from reinforcing his own army. Thus the German staff in 1870, where it had acquired authority, in particular in Alsace-Lorraine, sought to prevent the entrance of the inhabitants into the French army, even as in the Napoleonic wars the French authorities sought to prevent adherence of the States of the Rhine Confederation to the army of the Allies.

A man may be compelled to betray his Country.

The view that no inhabitant of occupied territory can be compelled to participate directly in the struggle against his own country is subject to an exception by the general usages of war which must be recorded here: the calling up and employment of the inhabitants as guides on unfamiliar ground. However much it may ruffle human feeling, to compel a man to do harm to his own Fatherland, and indirectly to fight his own troops, none the less no army operating in an enemy's country will altogether renounce this expedient.[1]

[1] [See Editor's Introduction for criticism of this brutality.—J.H.M.]

And Worse.

But a still more severe measure is the compulsion of the inhabitants to furnish information about their own army, its strategy, its resources, and its military secrets. The majority of writers of all nations are unanimous in their condemnation of this measure. Nevertheless it cannot be entirely dispensed with; doubtless it will be applied with regret, but the argument of war will frequently make it necessary.[1]

Of forced labour.

As to 5 and 6, the summoning of the inhabitants to supply vehicles and perform works has also been stigmatized as an unjustifiable compulsion upon the inhabitants to participate in "Military operations." But it is clear that an officer can never allow such a far-reaching extension of this conception, since otherwise every possibility of compelling work would disappear, while every kind of work to be performed in war, every vehicle to be furnished in any connection with the conduct of war, is or may be bound up with it. Thus the argument of war must decide. The German staff, in the War of 1870, moreover, rarely made use of compulsion in order to obtain civilian workers for the performance of necessary works. It paid high wages and, therefore, almost always had at its disposal sufficient offers. This procedure should, therefore, be maintained in future cases. The provision of a supply of labour is best arranged through the medium of the local authorities. In case of refusal of workers punishment can, of course, be inflicted. Therefore the conduct of the German civil commissioner, Count Renard—so strongly condemned by French jurists and jurists with French sympathies—who, in order to compel labour for the necessary repair of a bridge, threatened, in case of further refusal, after stringent threats of punishment had not succeeded in getting the work done, to punish the workers by shooting some of them, was in accordance with the actual laws of war; *the main thing was*

Of a certain harsh measure and its justification.

[1] [*Ibid.*]

that it attained its objeci, without its being necessary to practise it. The accusation made by the French that, on the German side, Frenchmen were compelled to labour at the siege works before Strassburg, has been proved to be incorrect.

Hostages.

7. By hostages are understood those persons who, as security or bail for the fulfilment of treaties, promises or other claims, are taken or detained by the opposing State or its army. Their provision has been less usual in recent wars, as a result of which some Professors of the law of nations have wrongly decided that the taking of hostages has disappeared from the practice of civilized nations. As a matter of fact it was frequently practised in the Napoleonic wars; also in the wars of 1848, 1849, and 1859 by the Austrians in Italy; in 1864 and 1866 by Prussia; in the campaigns of the French in Algiers; of the Russians in the Caucasus; of the English in their Colonial wars, as being the usual thing. The unfavourable criticisms of it by the German staff in isolated cases is therefore to be referred to different grounds of applied expedients.[1]

A "harsh and cruel" measure.

A new application of "hostage-right" was practised by the German staff in the war of 1870, when it compelled leading citizens from French towns and villages to accompany trains and locomotives in order to protect the railway communications which were threatened by the people. Since the lives of peaceable inhabitants were without any fault on their part thereby exposed to grave danger, every writer outside Germany has stigmatized this measure as contrary to the law of nations and

[1] For example, the carrying off of forty leading citizens from Dijon and neighbouring towns as reprisals against the making prisoners of the crew of German merchantmen by the French (undoubtedly contrary to the law of nations), the pretence being that the crews could serve to reinforce the German navy (a pretence strikingly repudiated by Bismarck's Notes of October 4th and November 16th, 1870). Lüder, *Das Landkriegsrecht*, p. 111.

as unjustified towards the inhabitants of the country. As against this unfavourable criticism it must be pointed out that this measure, which was also recognized on the German side as harsh and cruel, was only resorted to after declarations and instructions of the occupying[1] authorities had proved ineffective, and that in the particular circumstance it was the only method which promised to be effective against the doubtless unauthorized, indeed the criminal, behaviour of a fanatical population.

But it was "successful."

Herein lies its justification under the laws of war, but still more in the fact that it proved completely successful, and that wherever citizens were thus carried on the trains (whether result was due to the increased watchfulness of the communes or to the immediate influence on the population), the security of traffic was restored.[2]

To protect oneself against attack and injuries from the inhabitants and to employ ruthlessly the necessary means of defence and intimidation is obviously not only a right but indeed a duty of the staff of the army. The ordinary law will in this matter generally not suffice, it must be supplemented by the law of the enemy's might. Martial law and courts-martial must take the place of the ordinary jurisdiction.[3]

To Martial law are subject in particular :

1. All attacks, violations, homicides, and robberies, by soldiers belonging to the army of occupation.
2. All attacks on the equipment of this army, its supplies, ammunition, and the like.

[1] Proclamation of the Governor-General of Alsace, and to the same effect the Governor-General of Lorraine of October 18th, 1870.

[2] See Loning, *Die Verwaltung des General-gouvernements im Elsass*, p. 107.

[3] For a state of war the provisions of the Prussian Law of June 4th, 1861, still hold good to-day. According to this law all the inhabitants of the territory in a state of siege are subject to military courts in regard to certain punishable proceedings.

3. Every destruction of communication, such as bridges, canals, roads, railways and telegraphs.
4. War rebellion and war treason.

Only the fourth point requires explanation.

War Rebellion.

By war rebellion is to be understood the taking up of arms by the inhabitants against the occupation; by war treason on the other hand the injury or imperilling of the enemy's authority through deceit or through communication of news to one's own army as to the disposition, movement, and intention, etc., of the army in occupation, whether the person concerned has come into possession of his information by lawful or unlawful means (*i.e.*, by espionage).

Against both of these only the most ruthless measures are effective. Napoleon wrote to his brother Joseph, when, after the latter ascended the throne of Naples, the inhabitants of lower Italy made various attempts at revolt: "The security of your dominion depends on how you behave in the conquered province. Burn down a dozen places which are not willing to submit themselves. Of course, not until you have first looted them; my soldiers must not be allowed to go away with their hands empty. Have three to six persons hanged in every village which has joined the revolt; pay no respect to the cassock. Simply bear in mind how I dealt with them in Piacenza and Corsica." The Duke of Wellington, in 1814, threatened the South of France; "he will, if leaders of factions are supported, burn the villages and have their inhabitants hanged." In the year 1815, he issued the following proclamation: "All those who after the entry of the (English) army into France leave their dwellings and all those who are found in the service of the usurper will be regarded as adherents of his and as enemies; their property will be used for the maintenance of the army." "These are the expressions in the

one case of one of the great masters of war and of the dominion founded upon war power, and in the other, of a commander-in-chief who elsewhere had carried the protection of private property in hostile lands to the extremest possible limit.4 Both men as soon as a popular rising takes place resort to terrorism."[1]

"War Treason" and Unwilling Guides.

A particular kind of war treason, which must be briefly gone into here, inasmuch as the views of the jurists about it differ very strongly from the usages of war, is the case of deception in leading the way, perpetrated in the form of deliberate guiding of the enemy's troops by an inhabitant on a false or disadvantageous road. If he has offered his services, then the fact of his treason is quite clear, but also in case he was forced to act as guide his offence cannot be judged differently, for he owed obedience to the power in occupation; he durst in no case perpetrate an act of open resistance and positive harm but should have, if the worst came to the worst, limited himself to passive disobedience, and he must therefore bear the consequence.[2]

Another deplorable necessity.

However intelligible the inclination to treat and to judge an offence of this kind from a milder standpoint may appear, none the less the leader of the troops thus harmed cannot do otherwise than punish the offender with death, since only by harsh measures of defence and intimidation can the repetition of such offences be prevented. In this case a court-martial must precede the infliction of the penalty. The court-martial must however be on its guard against imputing hastily a treasonable intent to the guide. The punishment of misdirection requires in every case proof of evil intention.

Also it is not allowable to diplomatic agents to make

[1] J. von Hartmann, *Kritische Versuche*, II, p. 73.
[1] Lüder, *Das Landkriegsrecht*, p. 103.

communications from the country which they inhabit during the war to any side as to the military situation or proceedings. Persons contravening this universally recognized usage of war may be immediately expelled or in the case of great danger arrested.

CHAPTER II

PRIVATE PROPERTY IN WAR

Of Private Property and its immunities.

SINCE, according to the law of nations and the law of war to-day, war makes enemies of States and not of private persons, it follows that every arbitrary devastation of the country and every destruction of private property, generally speaking every unnecessary (*i.e.*, not required by the necessity of war) injury to alien property, is contrary to the law of nations. Every inhabitant of the territory occupied is therefore to be protected alike in his person and in his property.

In this sense spoke King William to the French at the beginning of the Campaign of 1870 : " I wage war with the French soldiers and not with the French citizens. The latter will therefore continue to enjoy security for their person and their goods, so long as they do not by hostile undertakings against German troops deprive me of the right to afford them my protection."

The question stands in quite another position if the necessity of war demands the requisition of the stranger's property, whether public or private. In this case of course every sequestration, every temporary or permanent deprivation, every use, every injury and all destruction are permitted.

The following principles therefore result :

1. Prohibited unconditionally are all aimless destructions, devastations, burnings, and ravages of the enemy's country. The soldier who practises such things is punished as an offender according to the appropriate laws.[1]

[1] Obviously we are only speaking of a war between civilized people since, in the case of savages and barbarians, humanity is not advanced

2. Permissible on the other hand are all destructions and injuries dictated by military considerations; and, indeed,
   (*a*) All demolitions of houses and other buildings, bridges, railways, and telegraphic establishments, due to the necessity of military operations.
   (*b*) All injuries which are required through military movements in the country or for earthworks for attack or defence.

Hence the double rule: No harm must be done, not even the very slightest, which is not dictated by military consideration; every kind of harm may be done, even the very utmost, which the conduct of war requires or which comes in the natural course of it.

Whether the natural justification exists or not is a subject for decision in each individual case. The answer to this question lies entirely in the power of the Commanding Officer, from whose conscience our times can expect and demand as far-reaching humanity as the object of war permits.

On similar principles must be answered the question as to the temporary use of property, dispositions as to houses and the like: no inhabitant of the occupied territory is to be disturbed in the use and free disposition of his property, on the other hand the necessity of war justifies the most far-reaching disturbance, restriction, and even imperilling of his property. In consequence there are permitted:

1. Requisitions of houses and their furniture for the purpose of billeting troops.
2. Use of houses and their furniture for the care of the sick and wounded.
3. Use of buildings for observation, shelter, defence, fortification, and the like.

very far, and one cannot act otherwise toward them than by devastation of their grain fields, driving away of their herds, taking of hostages, and the like.

Whether the property owners are subjects of the occupied territory or of a Foreign State is a matter of complete indifference; also the property of the Sovereign and his family is subject to no exception, although to-day it is usually treated with courtesy.

Of German behaviour.

The conception of the inviolability of private property here depicted was shared by the Germans in 1870 and was observed. If on the French side statements to the contrary are even to-day given expression, they rest either on untruth or exaggeration. It certainly cannot be maintained that no illegitimate violations of private property by individuals ever occurred. But that kind of thing can never be entirely avoided even among the most highly cultivated nations, and the best disciplined armies. In every case the strictest respect for private property was enjoined[1] upon the soldiers by the German Military Authorities after crossing the frontier, and strong measures were taken in order to make this injunction effective; the property of the French was indeed, as might be shown in numerous cases, protected against the population itself, and was even in several cases saved at the risk of our own lives.[2]

[1] Army Order of August 8th, 1870, on crossing the frontier:

"Soldiers! the pursuit of the enemy who has been thrust back after bloody struggles has already led a great part of our army across the frontier. Several corps will to-day and to-morrow set foot upon French soil. I expect that the discipline by which you have hitherto distinguished yourselves will be particularly observed on the enemy's territory. We wage no war against the peaceable inhabitants of the country; it is rather the duty of every honour-loving soldier to protect private property and not to allow the good name of our army to be soiled by a single example of bad discipline. I count upon the good spirit which animates the army, but at the same time also upon the sternness and circumspection of all leaders.

Headquarters, Homburg, August 8th, 1870.

(*Signed*) WILHELM."

[2] "It is well known that the vineyards in France were guarded and protected by the German troops, but the same thing happened in regard to the art treasures of Versailles, and the German soldiers protected French property at the risk of their lives against the incendiary bombs of the Paris Commune."— Lüder, *Landkriegsrecht*, p. 118.

The gentle Hun and the looking-glass

In like manner arbitrary destructions and ravages of buildings and the like did not occur on the German side where they were not called forth by the behaviour of the inhabitants themselves. They scarcely ever occurred except where the inhabitants had foolishly left their dwellings and the soldiers were excited by closed doors and want of food. "If the soldier finds the doors of his quarters shut, and the food intentionally concealed or buried, then necessity impels him to burst open the doors and to track the stores, and he then, in righteous anger, destroys a mirror, and with the broken furniture heats the stove."[1]

If minor injuries explain themselves in this fashion in the eyes of every reasonable and thinking man, so the result of a fundamental and unprejudiced examination has shown that the destructions and ravages on a greater scale, which were made a reproach against the German Army, have in no case overstepped the necessity prescribed by the military situation. Thus the much talked of, and, on the French side, enormously exaggerated, burning down of twelve houses in Bazeilles, together with the shooting of an inhabitant, were completely justified, and, indeed, in harmony with the laws of war; indeed one may maintain that the conduct of the inhabitants would have called for the complete destruction of the village and the condemnation of all the adult inhabitants by martial law.

[1] Bluntschli, *Völkerrecht*, sec. 652.

CHAPTER III

BOOTY AND PLUNDERING

Booty

IN section 1, the inhabitant of the enemy's territory was described as a subject of legal rights and duties, who, so far as the nature of war allows, may continue to live protected as in time of peace by the course of law; further, in section 2, property, whether it be public or private, was likewise, so far as war allows it, declared to be inviolable—it therefore follows logically that there can exist no right to the appropriation of the property, *i.e.*, a right to booty or plundering. Opinions as to this have, in the course of the last century, undergone a complete change; the earlier unlimited right of appropriation in war is to-day recognized in regard to public property as existing only in defined circumstances.

In the development of the principles recognized to-day we have to distinguish

1. State property and unquestionably:
   (*a*) immovable,[1]
   (*b*) movable.[1]
2. Private property:
   (*a*) immovable,
   (*b*) movable.

Immovable State property is now no longer forfeited as booty; it may, however, be used if such use is in the interests of military operation, and even destroyed, or temporarily administered. While in the wars of

[1] [These terms are translated literally. They are roughly equivalent to the English distinction between "real" and "personal" property.—J.H.M.]

the First French Empire, Napoleon, in numerous cases, even during the war itself, disposed of the public property of the enemy (domains, castles, mines, salt-works) in favour of his marshals and diplomatists, to-day an appropriation of this kind is considered by international opinion to be unjustified, and, in order to be valid, requires a formal treaty between the conqueror and the conquered.

The State realty may be used but must not be wasted.

The Military Government by the army of occupation is only a Usufructuary *pro tempore*. It must, therefore, avoid every purposeless injury, it has no right to sell or dispose of the property. According to this juristic view the military administration of the conqueror disposes of the public revenue and taxes which are raised in the occupied territory, with the understanding, however, that the regular and unavoidable expenses of administration continue to be defrayed. The military authority controls the railways and telegraphs of the enemy's State, but here also it possesses only the right of use and has to give back the material after the end of the war. In the administration of the State forests, it is not bound to follow the mode of administration of the enemy's Forest authorities, but it must not damage the woods by excessive cutting, still less may it cut them down altogether.

State Personality is at the mercy of the victor.

Movable State property on the other hand can, according to modern views, be unconditionally appropriated by the conqueror.

This includes public funds,[1] arms, and munition stores, magazines, transport, material supplies useful for the war and the like. Since the possession of things of this kind is of the highest importance for the conduct of the war, the conqueror is justified in destroying and annihilating them if he is not able to keep them.

[1] To be entirely distinguished from municipal funds which are regarded as private property.

On the other hand an exception is made as to all objects which serve the purposes of religious worship, education, the sciences and arts, charities and nursing. Protection must therefore be extended to : the property of churches and schools, of libraries and museums, of almshouses and hospitals. The usual practice of the Napoleonic campaigns[1] so ruthlessly resorted to of carrying off art treasures, antiquities, and whole collections, in order to incorporate them in one's own art galleries, is no longer allowed by the law of nations to-day.[2]

Private realty.

Immovable private property may well be the object of military operations and military policy, but cannot be appropriated as booty, nor expended for fiscal or private purposes of acquisition. This also includes, of course, the private property of the ruling family, in so far as it really possesses this character and is not Crown Lands, whose fruits are expended as a kind of Civil List or serve to supplement the same.

Private personalty.

Movable private property, finally, which in earlier times was the undeniable booty of the conqueror, is to-day regarded as inviolable. The carrying off of money, watches, rings, trinkets, or other objects of value, is therefore to be regarded as criminal robbery and to be punished accordingly.

The appropriation of private property is regarded as partially permissible in the case of those objects which the conquered combatant carries on his own person. Still here, also, opinions against the practice

[1] How sensitive, indeed, how utterly sentimental, public opinion has become to-day in regard to this question, is shown by the attitude of the French and German Press in regard to some objects of art carried away from China.

[2] As to booty in the shape of horses, the Prussian instructions say : " Horses taken as booty belong to the State and are therefore to be handed over to the horse depot. For every horse which is still serviceable he who has captured it receives a bonus of 18 dollars out of the exchequer, and for every unserviceable horse half this sum.

make it clear that the taking away of objects of value, money, and such-like is not permissible, and only those required for the equipment of troops are declared capable of appropriation.

The recognition of the inviolability of private property does not of course exclude the sequestration of such objects as can, although they are private property, at the same time be regarded as of use in war. This includes, for example, warehouses of supplies, stores of arms in factories, depots of conveyances or other means of traffic, as bicycles, motor cars, and the like, or other articles likely to be of use with advantage to the army, as telescopes, etc. In order to assure to the possessors compensation from their government, equity enjoins that a receipt be given for the sequestration.

"Choses in action."

Logically related to movable property are the so-called "incorporeal things." When Napoleon, for example, appropriated the debts due to the Elector of Hesse and thus compelled the Elector's debtors to pay their debts to him; when he furthermore in 1807 allowed the debts owed by the inhabitants of the Duchy of Warsaw to Prussian banks and other public institutions, and indeed even to private persons in Prussia, to be assigned by the King of Prussia, and then sold them to the King of Saxony for 200 million francs, this was, according to the modern view, nothing better than robbery.

Plundering is wicked.

Plundering is to be regarded as the worst form of appropriation of a stranger's property. By this is to be understood the robbing of inhabitants by the employment of terror and the abuse of a military superiority. The main point of the offence thus consists in the fact that the perpetrator, finding himself in the presence of the browbeaten owner, who feels defenceless and can offer no opposition, appropriates things, such as food and clothing, which he does not want for his own needs. It is not plundering but downright burglary if a man pilfers

things out of uninhabited houses or at times when the owner is absent.

Plundering is by the law of nations to-day to be regarded as invariably unlawful. If it may be difficult sometimes in the very heat of the fight to restrain excited troops from trespasses, yet unlawful plundering, extortion, or other violations of property, must be most sternly punished, it matters not whether it be done by members of unbroken divisions of troops or by detached soldiers, so-called marauders, or by the "hyenas of the battlefield." To permit such transgressions only leads, as experience shows, to bad discipline and the demoralization of the Army.[1]

In the Franco-Prussian War, plundering and taking of booty were on the German side sternly forbidden. The Articles of War in question were repeatedly recalled to every soldier just as in time of peace, also numerous orders of the day were issued on the part of the higher authorities. Transgressions were ruthlessly punished, in some cases even after the War.

[1] Napoleon, who actually permitted his soldiers to plunder in numerous cases and in others, at least, did not do his best to prevent it, spoke of it at St. Helena: "Policy and morality are in complete agreement in their opposition to pillage. I have meditated a good deal on this subject; I have often been in a position to gratify my soldiers thereby; I would have done it if I had found it advantageous. But nothing is more calculated to disorganize and completely ruin an army. From the moment he is allowed to pillage, a soldier's discipline is gone."

CHAPTER IV

REQUISITIONS AND WAR LEVIES

Requisitions

By requisitions is to be understood the compulsory appropriation of certain objects necessary for the army which is waging war. What things belong to this category is quite undetermined. They were primarily the means to feed man and beast, next to clothe and equip the members of the army, *i.e.*, to substitute clothing and equipment for that which has worn out or become insufficient in view of the altered circumstances and also to supplement it; furthermore there will be such objects as serve for the transport of necessaries, and finally all objects may be demanded which serve to supply a temporary necessity, such as material and tools for the building of fortifications, bridges, railways and the like. That requisitions of this kind are unconditionally necessary and indispensable for the existence of the army, no one has yet denied; and whether one bases it legally upon necessity or merely upon the might of the stronger is a matter of indifference as far as the practice is concerned.

How the docile German learnt the "better way."

The right generally recognized by the law of nations of to-day to requisition is a child of the French Revolution and its wars. It is known that as late as in the year 1806, Prussian battalions camped close to big stacks of corn and bivouacked on potato fields without daring to appease their hunger with the property of the stranger; the behaviour of the French soon taught them a better way. Everyone knows the ruthless fashion in which the army of the French Republic and

of Napoleon satisfied their wants, but of late opinion laying stress upon the protection of private property has asserted itself. Since a prohibition of requisitions would, considering what war is, have no prospect of acceptance under the law of nations, the demand has been put forward that the objects supplied should at least be paid for. This idea has indeed up till now not become a principle of war, the right of requisitioning without payment exists as much as ever and will certainly be claimed in the future by the armies in the field, and also, considering the size of modern armies, must be claimed; but it has at least become the custom to requisition with as much forbearance as possible, and to furnish a receipt for what is taken, the discharge of which is then determined on the conclusion of peace.

To exhaust the country is deplorable but we mean to do it.

In order to avoid overdoing it, as may easily happen in the case of requisitions, it is often arranged that requisitions may never be demanded by subordinates but only by the higher officers, and that the local civil authorities shall be employed for the purpose. It cannot, however, be denied that this is not always possible in war; that on the contrary the leader of a small detachment and in some circumstances even a man by himself may be under the necessity to requisition what is indispensable to him. Article 40 of the Declaration of Brussels requires that the requisitions (being written out) shall bear a direct relation to the capacity and resources of a country, and, indeed, the justification for this condition would be willingly recognized by everyone in theory, but it will scarcely ever be observed in practice. In cases of necessity the needs of the army will alone decide, and a man does well generally to make himself familiar with the reflection that, in the changing and stormy course of a war, observance of the orderly conduct of peaceful times is, with the best will, impossible.

In the Franco-Prussian War of 1870 much was requisitioned on the German side. According to the opinion of all impartial writers it was done with moderation and the utmost tenderness for the inhabitants, even if in isolated cases excesses occurred. Receipts were always furnished. Later, in the case of the army on the Meuse, as early as the middle of October requisitions were, wherever it was possible, entirely left out of account and everything was paid for in cash. Later proceedings were frequently and indeed studiously conducted with a precise estimate of the value in thalers or francs.[1] "Moreover, military history knows of no campaign in which the victualling of an army at such a distance from home was so largely conducted with its own stores."[2]

"Buccaneering Levies."

By war levies or contributions is to be understood the raising of larger or smaller sums of money from the parishes of the occupied territory. They are thus to be distinguished from requisitions since they do not serve for the satisfaction of a momentary want of the army and consequently can only in the rarest cases be based upon the necessity of war. These levies originated as so-called "Brandschatzungen," *i.e.*, as a ransom from plundering and devastation, and thus constituted, compared with the earlier looting system, a step in the humanizing of war. Since the law of nations to-day no longer recognizes any right to plundering and devastation, and inasmuch as the principle that war is conducted only against States, and not against private persons, is uncontested, it follows logically that levies which can be characterized as simply booty-making or plundering, that is to say, as arbitrary enrichment of the conquerors, are not permitted by modern opinion. The conqueror is, in particular, not justified in recouping

[1] Dahn, *Jahrbuch f. A.u.M.*, III, 1876. Jacquemyns Revue.
[2] Dahn, *ibid.*, III, 1871.

himself for the cost of the war by inroads upon the property of private persons, even though the war was forced upon him.

War levies are therefore only allowed:

1. As a substitute for taxes.
2. As a substitute for the supplies to be furnished as requisitions by the population.
3. As punishments.

As to 1: This rests upon the right of the power in occupation to raise and utilize taxes.

As to 2: In cases where the provision of prescribed objects in a particular district is impossible, and in consequence the deficiency has to be met by purchase in a neighbouring district.

As to 3: War levies as a means of punishing individuals or whole parishes were very frequently employed in the Franco-Prussian War. If French writers accuse the German staff of excessive severity in this respect, on the other hand it is to be remarked that the embittered character which the war took on in its latest stage, and the lively participation of the population therein, necessitated the sternest measures. But a money tax, judging by experience, operates, in most cases, on the civil population. The total sum of all the money contributions raised in the War of 1870 may be called a minimum compared with the sums which Napoleon was accustomed to draw from the territories occupied by him. According to official estimates, havoc amounting to about six milliards of francs was visited upon the four million inhabitants of Prussia in the years 1807-13.

In regard to the raising of war levies it should be noted that they should only be decreed by superior officers and only raised with the co-operation of the local authorities. Obviously an acknowledgment of every sum raised is to be furnished.

1. In the military laws of different countries the right of levying contributions is exclusively reserved to the Commander-in-Chief.

2. The usual method of raising taxes would, in consequence of their slowness, not be in harmony with the demands of the War; usually, therefore, the Civil Authorities provide themselves with the necessary money by a loan, the repayment of which is provided for later by law.

CHAPTER V

ADMINISTRATION OF OCCUPIED TERRITORY

How to administer an Invaded Country.

ACCORDING to earlier views right up to the last century, a Government whose army had victoriously forced itself into the territory of a foreign State could do exactly as it pleased in the part occupied. No regard was to be paid to the constitution, laws, and rights of the inhabitants. Modern times have now introduced, in this respect, a change in the dominant conceptions, and have established a certain legal relationship between the inhabitants and the army of occupation. If, in the following pages, we develop briefly the principles which are applied to the government of territory in occupation, it must none the less be clearly emphasized that the necessities of war not only allow a deviation from these principles in many cases but in some circumstances make it a positive duty of the Commander.

The occupation of a portion of the enemy's territory does not amount to an annexation of it. The right of the original State authority consequently remains in existence; it is only suspended when it comes into collision with the stronger power of the conqueror during the term of the occupation, *i.e.*, only for the time being.[1]

[1] The King of Denmark in 1715, whilst Charles XII, after the Battle of Pultawa, stayed for years in Bender, sold the conquered principalities of Bremen and Verden to the King of England, Elector of Hanover, before England had yet declared war on Sweden. This undoubtedly unlawful act of England first received formal recognition in the Peace of Stockholm, 1720.

But the administration of a country itself cannot be interrupted by war; it is therefore in the interest of the country and its inhabitants themselves, if the conqueror takes it in hand, to let it be carried on either with the help of the old, or, if this is not feasible, through the substitution of the new, authorities.

From this fundamental conception now arises a series of rights and duties of the conqueror on the one side and of the inhabitants on the other.

The Laws remain—with qualification.

Since the conqueror is only the substitute for the real Government, he will have to establish the continuation of the administration of the country with the help of the existing laws and regulations. The issue of new laws, the abolition or alteration of old ones, and the like, are to be avoided if they are not excused by imperative requirements of war; only the latter permit legislation which exceeds the need of a provisional administration. The French Republic, at the end of the eighteenth century, frequently abolished the pre-existing constitution in the States conquered by it, and substituted a Republican one, but this is none the less contrary to the law of nations to-day. On the other hand, a restriction of the freedom of the Press, of the right of association, and of public meeting, the suspension of the right of election to the Parliament and the like, are in some circumstances a natural and unavoidable consequence of the state of war.

The inhabitants must obey.

The inhabitants of the occupied territory owe the same obedience to the organs of Government and administration of the conqueror as they owed before the occupation to their own. An act of disobedience cannot be excused by reference to the laws or commands of one's own Government; even so an attempt to remain associated with the old Government or to act in agreement with it is punishable. On the other hand, the provisional Government can demand nothing which

can be construed as an offence against one's own Fatherland or as a direct or indirect participation in the war.

Martial Law. The civil and criminal jurisdiction continues in force as before. The introduction of an extraordinary administration of justice — martial law and courts-martial—is therefore only to take place if the behaviour of the inhabitants makes it necessary. The latter are, in this respect, to be cautioned, and any such introduction is to be made known by appropriate means. The courts-martial must base any sentence on the fundamental laws of justice, after they have first impartially examined, however summarily, the facts and have allowed the accused a free defence.

The conqueror can, as administrator of the country and its Government, depose or appoint officials. He can put on their oath the civil servants, who continue to act, as regards the scrupulous discharge of their duties. But to compel officials to continue in office against their will does not appear to be in the interest of the army of occupation. Transgressions by officials are punished by the laws of their country, but an abuse of their position to the prejudice of the army of occupation will be punished by martial law.

Also judicial officers can be deposed if they permit themselves to oppose publicly the instructions of the provisional Government. Thus it would not have been possible, if the occupation of Lorraine in the year 1870-71 had been protracted, to avoid deposing the whole bench of Judges at Nancy and substituting German Judges, since they could not agree with the German demands in regard to the promulgation of sentence.[1]

[1] The German administration desired that, as hitherto, justice should be administered in the name of the Emperor (Napoleon III). The Court, on the contrary, desired, after the revolution of September 4th, 1870, to use the formula: "In the name of the French Republic." The Court no longer recognized the Emperor as Sovereign,

Fiscal Policy

The financial administration of the occupied territory passes into the hands of the conqueror. The taxes are raised in the pre-existing fashion. Any increase in them due to the war is enforced in the form of "War levies." Out of the revenue of the taxes the costs of the administration are to be defrayed, as, generally speaking, the foundations of the State property are to be kept undisturbed. Thus the domains, forests, woodlands, public buildings and the like, although utilized, leased, or let out, are not to be sold or rendered valueless by predatory management. On the other hand it is permitted to apply all surplus from the revenues of administration to the use of the conqueror.

The same thing holds good of railways, telegraphs, telephones, canals, steamships, submarine cables and similar things; the conqueror has the right of sequestration, of use and of appropriation of any receipts, as against which it is incumbent upon him to keep them in good repair.

If these establishments belong to private persons, then he has indeed the right to use them to the fullest extent; on the other hand he has not the right to sequestrate the receipts. As regards the right of annexing the rolling-stock of the railways, the opinions of authoritative teachers of the law of nations differ from one another. Whilst one section regard all rolling-stock as one of the most important war resources of the enemy's State, and in consequence claim for the conqueror the right of unlimited sequestration, even if the railways belonged to private persons or private companies,[1] on the other hand the other section incline

the German authorities did not yet recognize the Republic. Finally the Court, unfortunately for the inhabitants, ceased its activities. The proper solution would have been, according to Bluntschli (547 either the use of a neutral formula, as, for example, "In the name of the law," or the complete omission of the superfluous formula.

[1] Stein, *Revue* 17, Declaration of Brussels, Article 6.

to a milder interpretation of the question, in that they start from the view that the rolling-stock forms, along with the immovable material of the railways, an inseparable whole, and that one without the other is worthless and is therefore subject to the same laws as to appropriation.[1] The latter view in the year 1871 found practical recognition in so far as the rolling-stock captured in large quantities by the Germans on the French railways was restored at the end of the war; a corresponding regulation was also adopted by The Hague Conference in 1899.

Occupation must be real not fictitious.

These are the chief principles for the administration of an occupied country or any portion of it. From them emerges quite clearly on the one hand the duties of the population, but also on the other the limits of the power of the conqueror. But the enforcement of all these laws presupposes the actual occupation of the enemy's territory and the possibility of really carrying them out.[2] So called "fictitious occupation," such as frequently occurred in the eighteenth century and only existed in a declaration of the claimant, without the country concerned being actually occupied, are no longer recognized by influential authorities on the law of nations as valid. If the conqueror is compelled by the vicissitudes of war to quit an occupied territory, or if it is voluntarily given up by him, then his military sovereignty immediately ceases and the old State authority of itself again steps into its rights and duties.

[1] *Manuel* 51; Moynier, *Revue* 19, 165.

[2] Article 42 of The Hague Regulations runs: "Territory is considered to be occupied when it is placed as a matter of fact under the authority of the hostile army. The occupation extends only to territories where that authority is established and capable of being exercised."

PART III

USAGES OF WAR AS REGARDS NEUTRAL STATES

What neutrality means.

By the neutrality of a State is to be understood non-participation in the war by third parties; the duly attested intention not to participate in the conduct of the war either in favour of, or to the prejudice of, either one of the two belligerents. This relationship gives rise in the case of the neutral State to certain rights but also to fixed duties. These are not laid down by international regulations or international treaties; we have therefore here also to do with "Usages of War."

A neutral cannot be all things to all men; therefore he must be nothing to any of them.

What is principally required of a neutral State is equal treatment of both belligerents. If, therefore, the neutral State could support the belligerents at all, it would have to give its support in equal measure to both parties. As this is quite impossible and as one of the two parties—and probably every one of them—would regard itself as injured in any case, it therefore follows as a practical and empirical principle: "not to support the two [*i.e.*, either or both] belligerents is the fundamental condition of neutrality."

But there are limits to this detachment.

But this principle would scarcely be maintained in its entirety, because in that case the trade and intercourse of the neutral State would in some circumstances be more injured than that of the belligerents themselves. But no State can be compelled to act against its own vital interests, therefore it is necessary to limit the above principle as follows: "No neutral State can support the belligerents as far as military operations are concerned. This principle sounds very simple and

lucid; its content is, however, when closely considered very ambiguous and in consequence the danger of dissensions between neutral and belligerent States is very obvious."

In the following pages the chief duties of neutral States are to be briefly developed. It is here assumed that neutrality is not to be regarded as synonymous with indifference and impartiality towards the belligerents and the continuance of the war. As regards the expression of partisanship all that is required of neutral States is the observance of international courtesies; so long as these are observed there is no occasion for interference.

Duties of the neutral.

The chief duties of neutral States are to be regarded as:

Belligerents must be warned off.

1. The territory of neutral States is available for none of the belligerents for the conduct of its military operations.[1] The Government of the neutral State has therefore, once War is declared, to prevent the subjects of both parties from marching through it; it has likewise to prevent the laying out of factories and workshops for the manufacture of War requisites for one or other of the parties. Also the organization of troops and the assembling of "Freelances" on the territory of neutral States is not allowed by the law of nations.[2]

[1] The passage of French troops through Prussian territory in October, 1805, was a contempt of Prussian neutrality.—The moment the Swiss Government permitted the Allies to march through its territory in the year 1814, it thereby renounced the rights of a neutral State.—In the Franco-Prussian War the Prussian Government complained of the behaviour of Luxemburg in not stopping a passage *en masse* of fugitive French soldiers after the fall of Metz through the territory of the Grand Duchy.

[2] The considerable reinforcement of the Servian Army in the year 1876 by Russian Freelances was an open violation of neutrality, the more so as the Government gave the officers permission, as the Emperor himself confessed later to the English Ambassador in Livadia. The English Foreign Enlistment Act of 1870, Art. 4,* forbids all English subjects during a war in which England remains neutral, to enter the army or the navy of a belligerent State, or the

a. If the frontiers of the neutral State march with those of the territory where the War is being waged, its Government must take care to occupy its own frontiers in sufficient strength to prevent any portions of the belligerent Armies stepping across it with the object of marching through or of recovering after a Battle, or of withdrawing from War captivity. Every member of the belligerent Army who trespasses upon the territory of the neutral State is to be disarmed and to be put out of action till the end of the War. If whole detachments step across, they must likewise be dealt with. They are, indeed, not prisoners of War, but, nevertheless, are to be prevented from returning to the seat of War. A discharge before the end of the War would presuppose a particular arrangement of all parties concerned.

The neutral must guard its inviolable frontiers. It must intern the Trespassers.

If a convention to cross over is concluded, then, according to the prevalent usages of War, a copy of the conditions is to be sent to the Victor.[1] If the troops passing through are taking with them prisoners of War, then these are to be treated in like fashion. Obviously, the neutral State can later demand compensation for the maintenance and care of the troops who have crossed over, or it can keep back War material as a provisional payment. Material which is liable to be spoilt, or the keeping of which would be disproportionately costly, as, for example, a considerable number of

enlistment for the purpose, without the express permission of the Government. Similarly the American law of 1818. The United States complained energetically during the Crimean War of English recruiting on their territory.

*[This Act applies to British subjects wherever they may be, and it also applies to aliens, but only if they enlisted or promoted enlistment on British territory. For a full discussion of the scope of the Act see *R. v. Jameson* (1896), 2 Q.B. 425.—J.H.M.]

[1] At the end of August, 1870, some French detachments, without its being known, marched through Belgian territory; others in large numbers fled after the Battle at Sedan to Belgium, and were there disarmed. In February, 1871, the hard-pressed French Army of the East crossed into Switzerland and were there likewise disarmed

horses, can be sold, and the net proceeds set off against the cost of internment.

Unneutral service.

3. A neutral State can support no belligerent by furnishing military resources of any kind whatsoever, and is bound to prevent as much as possible the furnishing of such wholesale on the part of its subjects. The ambiguity of the notion "Kriegs mittel" has often led to complications. The most indispensable means for the conduct of a War is money. For this very reason it is difficult to prevent altogether the support of one or other party by citizens of neutral States, since there will always be Bankers who, in the interest of the State in whose success they put confidence, and whose solvency in the case of a defeat they do not doubt, will promote a loan. Against this nothing can be said from the point of view of the law of nations; rather the Government of a country cannot be made responsible for the actions of individual citizens, it could only accept responsibility if business of this kind was done by Banks immediately under the control of the State or on public Stock Exchanges.

The "sinews of war"—loans to belligerents.

Contraband of War.

It is otherwise with the supply of contraband of war, that is to say, such things as are supplied to a belligerent for the immediate support of war as being warlike resources and equipment. These may include:

(*a*) Weapons of war (guns, rifles, sabres, etc., ammunition, powder and other explosives, and military conveyances, etc.).

(*b*) Any materials out of which this kind of war supplies can be manufactured, such as saltpetre, sulphur, coal, leather, and the like.

(*c*) Horses and mules.

(*d*) Clothing and equipment (such as uniforms of all kinds, cooking utensils, leather straps, and footwear).

(*e*) Machines, motor-cars, bicycles, telegraphic apparatus, and the like.

All these things are indispensable for the conduct of war, their supply in great quantities means a proportionately direct support of the belligerent. On the other hand, it cannot be left out of account that many of the above-mentioned objects also pertain to the peaceable needs of men, *i.e.*, to the means without which the practice of any industry would be impossible, and the feeding of great masses of the population doubtful. The majority of European States are, even in time of peace, dependent on the importation from other countries of horses, machines, coal, and the like, even as they are upon that of corn, preserved foods, store cattle, and other necessaries of life. The supply of such articles by subjects of a neutral State may, therefore, be just as much an untainted business transaction and pacific, as a support of a belligerent. The question whether the case amounts to the one or the other is therefore to be judged each time upon its merits. In practice, the following conceptions have developed themselves in the course of time: Good business.

(*a*) The purchase of necessaries of life, store cattle, preserved foods, etc., in the territory of a neutral, even if it is meant, as a matter of common knowledge, for the revictualling of the Army, is not counted a violation of neutrality, provided only that such purchases are equally open to both parties. Foodstuffs.

(*b*) The supply of contraband of war, in small quantities, on the part of subjects of a neutral State to one of the belligerents is, so far as it bears the character of a peaceable business transaction and not that of an intentional aid to the war, not a violation of neutrality. No Government can be expected to prevent it in isolated and trivial cases, since it would impose on the States concerned quite disproportionate exertions, and on their citizens countless sacrifices of money and time. He Contraband on a small scale.

who supplies a belligerent with contraband does so on his own account and at his own peril, and exposes himself to the risk of Prize.[1]

And on a large scale.

(c) The supply of war resources on a large scale stands in a different position. Undoubtedly this presents a case of actual promotion of a belligerent's cause, and generally of a warlike succour. If, therefore, a neutral State wishes to place its detachment from the war beyond doubt, and to exhibit it clearly, it must do its utmost to prevent such supplies being delivered. The instructions to the Customs authorities must thus be clearly and precisely set out, that on the one hand they notify the will of the Government to set their face against such wanton bargains with all their might, but that on the other, they do not arbitrarily restrict and cripple the total home trade.

The practice differs.

In accordance with this view many neutral States, such as Switzerland, Belgium, Japan, etc., did, during the Franco-Prussian War, forbid all supply or transit of arms to a belligerent, whilst England and the United States put no kind of obstacles whatsoever in the way of the traffic in arms, and contented themselves with drawing the attention of their commercial classes to the fact that arms

[1] In the negotiations in 1793, as to the neutrality of North America in the Anglo-French War, Jefferson declared: "The right of the citizens to fashion, sell, and export arms cannot be suspended by a foreign war, but American citizens pursue it on their own account and at their own risk."—Bluntschli, sec. 425 (2). Similarly in the famous treaty between Prussia and the United States of September 10th, 1785, it was expressly fixed in Article 13 that if one of the two States was involved in war and the other State should remain neutral, the traders of the latter should not be prevented from selling arms and munitions to the enemy of the other. Thus the contraband articles were not to be confiscated, but the merchants were to be paid the value of their goods by the belligerent who had seized them. This arrangement was, however, not inserted in the newer treaties between Prussia and the Union in 1799 and 1828.

were contraband, and were therefore exposed to capture on the part of the injured belligerent.[1]

It is evident, therefore, that the views of this particular relation of nations with each other still need clearing up, and that the unanimity which one would desire on this question does not exist.

Who may pass—the Sick and the Wounded.

4. The neutral State may allow the passage or transport of wounded or sick through its territory without thereby violating its neutrality; it has, however, to watch that hospital trains do not carry with them either war personnel or war material with the exception of that which is necessary for the care of the sick.[2]

Who may not pass—Prisoners of War.

5. The passage or transport of prisoners of war through neutral territory is, on the other hand, not to be allowed, since this would be an open favouring of the belligerent who happened to be in a position to make prisoners of war on a large scale, while his own railways, water highways, and other means of transport remained free for exclusively military purposes.

[1] In the exchange of despatches between England and Germany which arose out of the English deliveries of arms, the English Minister, Lord Granville, declares, in reply to the complaints of the German Ambassador in London, Count Bernstorff, that this behaviour is authorized by the pre-existing practice, but adds that "with the progress of civilization the obligations of neutrals have become more stringent, and declares his readiness to consult with other nations as to the possibility of introducing in concert more stringent rules, although his expectations of a practical result are, having regard to the declarations of the North-American Government, not very hopeful." President Grant had, it is true, already in the Neutrality Proclamation of August 22nd, 1870, declared the trade in contraband in the United States to be permitted, but had uttered a warning that the export of the same over sea was forbidden by International Law. He had later expressly forbidden the American arsenal administration to sell arms to a belligerent, an ordinance which was of course self-evident and was observed even in England, but he did not attempt to prevent dealers taking advantage of the public sale of arms out of the State arsenals to buy them for export to the French.

[2] Belgium allowed itself, in August, 1870, owing to the opposition of France, to be talked into forbidding the transport of wounded

These are the most important duties of neutral States so far as land warfare is concerned. If they are disregarded by the neutral State itself, then it has to give satisfaction or compensation to the belligerent who is prejudiced thereby. This case may also occur if the Government of the neutral State, with the best intentions to abstain from proceedings which violate neutrality, has, through domestic or foreign reasons, not the power to make its intentions good. If, for example, one of the two belligerents by main force marches through the territory of a neutral State and this State is not in a position to put an end to this violation of its neutrality, then the other belligerent has the right to engage the enemy on the hitherto neutral territory.

Rights of the neutral.

The duties of neutral States involve corresponding rights, such as :

The neutral has the right to be left alone.

1. The neutral State has the right to be regarded as still at peace with the belligerents as with others.

Neutral territory is sacred.

2. The belligerent States have to respect the inviolability of the neutral and the undisturbed exercise of its sovereignty in its home affairs, to abstain from any attack upon the same, even if the necessity of war should make such an attack desirable. Neutral States, therefore, possess also the right of asylum for single members or adherents of the belligerent Powers, so far as no favour to one or other of them is thereby implied. Even the reception of a smaller or larger detachment of troops which is fleeing from pursuit does not give the pursuer the right to continue his pursuit across the

after the Battle of Sedan, through Belgian territory, and out of excessive caution interpreted its decree of August 27th as amounting to a prohibition of the transport even of individual wounded. The French protest was based on the contention that by the transport of wounded through Belgium, the military communication of the enemy with Germany was relieved from a serious hindrance. "On such a ground"—thinks Bluntschli (p. 434)—"one might set one's face against the transport of large numbers but not the transport of individuals. These considerations of humanity should decide."

frontier of the neutral territory. It is the business of the neutral State to prevent troops crossing over in order to reassemble in the chosen asylum, reform, and sally out to a new attack.

The neutral may resist a violation of its territory "with all the means in its power."

3. If the territory of a neutral State is trespassed upon by one of the belligerent parties for the purpose of its military operations, then this State has the right to proceed against this violation of its territory with all the means in its power and to disarm the trespassers. If the trespass has been committed on the orders of the Army Staff, then the State concerned is bound to give satisfaction and compensation; if it has been committed on their own responsibility, then the individual offenders can be punished as criminals. If the violation of the neutral territory is due to ignorance of its frontiers and not to evil intention, then the neutral State can demand the immediate removal of the wrong, and can insist on necessary measures being taken to prevent a repetition of such contempts.

Neutrality is presumed

4. Every neutral State can, so long as it itself keeps faith, demand that the same respect shall be paid to it as in time of peace. It is entitled to the presumption that it will observe strict neutrality and will not make use of any declarations or other transactions as a cloak for an injustice against one belligerent in favour of the other, or will use them indifferently for both. This is particularly important in regard to Passess, Commissions, and credentials issued by a neutral State.[1]

The property of neutrals.

5. The property of the neutral State, as also that of its citizens, is, even if it lies within the seat of war, to be respected so far as the necessity of war allows. It can obviously be attacked and even destroyed in certain circumstances by the belligerents, but only if complete compensation be afterwards made to the injured owners. Thus—to

[1] Dr. A. W. Heffter, *Das Europäische Völkerrecht der Gegenwart* (7th ed.), 1882, p. 320.

make this clear by an example from the year 1870—the capture and sinking of six English colliers at Duclaix was both justified and necessary on military grounds, but it was, for all that, a violent violation of English property, for which on the English side compensation was demanded, and on the German side was readily forthcoming.

Diplomatic intercourse.

6. Neutral States may continue to maintain diplomatic intercourse with the belligerent Powers undisturbed, so far as military measures do not raise obstacles in the way of it.

GARDEN CITY PRESS LIMITED, PRINTERS, LETCHWORTH.

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